



EIOPA-CP-14/013
1 April 2014

Annex to the EIOPA consultation on the ITS for Solvency II

This annex is a non-official reference to the draft Delegated Act articles implementing the Solvency II Directive, which relate to the first set of ITS published on 1 April 2014 regarding the approval processes for ancillary own funds, special purpose vehicles, undertaking-specific parameters, matching adjustment and internal models. The Delegated Acts have not yet been formally adopted by the European Commission. The draft articles are based on a non-public working document from the Commission presented to the Members of the Expert Group on Banking, Payments and Insurance (Insurance Formation) in March 2014.

EIOPA is not considering comments on the draft articles below and the present document is merely for information purposes. The text copied hereunder aims to support the consultation, and should not be seen as pre-empting the final text to be adopted by Commission.

Article no.	Text
52 AOF2	<p>(1) The supervisory authorities shall base their approval on an assessment of the requirements in Article 90 of Directive 2009/138/EC, taking into account at least the following:</p> <ul style="list-style-type: none"> (a) the legal effectiveness and enforceability of the terms of the commitment in all relevant jurisdictions; (b) the contractual terms of the arrangement that the insurance or reinsurance undertaking has entered into with the counterparties to provide funds; (c) where relevant, the insurance or reinsurance undertaking's memorandum and articles of association or statutes. <p>(2) The supervisory authorities shall also assess whether the requirements in Article 90 of Directive 2009/138/EC are met taking into account the range of circumstances under which the item can be called up to absorb losses.</p> <p>(3) Where the insurance or reinsurance undertaking is seeking approval of a method by which to determine the amount of each ancillary own-fund item, the supervisory authorities shall assess whether the undertaking's process for regularly validating the method is appropriate to ensure that the results of the method reflect the loss-absorbency of the item on an ongoing basis.</p>

	<p>(4) The insurance or reinsurance undertaking shall demonstrate to the supervisory authorities that the requirements in paragraphs 1(a), 2 and 3 are met and provide them with the information in points (a) and (b) of paragraph 1.</p> <p>(5) In addition to the requirements set out in the paragraphs 1 to 3, the supervisory authorities shall assess the application for approval of ancillary own funds based on the criteria in Articles AOF3 to AOF5.</p>
53 AOF3	<p>(1) In accordance with Article 90(4)(a) of Directive 2009/138/EC, the supervisory authorities shall base their approval on an assessment of the counterparties' ability to pay, considering:</p> <ul style="list-style-type: none"> (a) the risk of default of the counterparties; (b) the risk that default arises from a delay in the counterparties satisfying their commitments under the ancillary own funds item. <p>(2) The insurance or reinsurance undertaking shall demonstrate to the supervisory authorities the counterparties' ability to pay, taking into account points (a) and (b) of paragraph 1.</p> <p>(3) In relation to paragraph 1(a), the supervisory authorities shall assess the risk of default of the counterparties by examining the probability of default of the counterparties and the loss given default, taking into account the following criteria:</p> <ul style="list-style-type: none"> (a) the credit standing of the counterparties, provided that this appropriately reflects the counterparties' ability to satisfy their commitments under the ancillary own funds item; (b) whether there are any current or foreseeable practical or legal impediments to the counterparties' satisfaction of their commitments under the ancillary own funds item; (c) whether the counterparties are subject to legal or regulatory requirements that reduce the counterparties' ability to satisfy their commitments under the ancillary own funds item; (d) whether the legal form of the counterparties prejudice the counterparties' satisfaction of their commitments under the ancillary own funds item; (e) whether the counterparties are subject to other exposures which reduce the counterparties' ability to satisfy their commitments under the ancillary own funds item; (f) whether, in relation to their commitment under the ancillary own fund item, the contractual terms of the arrangement under any applicable law are such that the counterparties have rights to set-off amounts they owe against any amounts owed to them by the insurance or reinsurance undertaking. <p>(4) The insurance or reinsurance undertaking shall communicate to the supervisory authorities its own assessment of the risk of default of the counterparties by examining the probability of default of the counterparties and of the loss given default, taking into account the criteria referred to in points (a) to (f) of paragraph 3.</p> <p>(5) In relation to paragraph 1(b), the supervisory authorities shall assess the liquidity position of the counterparties, taking into account the following:</p> <ul style="list-style-type: none"> (a) whether there are any current or foreseeable practical or legal impediments to the counterparties' ability to promptly satisfy their commitments under the ancillary own funds item; (b) whether the counterparties are subject to legal or regulatory requirements that may reduce the counterparties' ability to promptly satisfy their commitments under the ancillary own funds item;

	<p>(c) whether the legal form of the counterparties prejudices the counterparties' prompt satisfaction of their commitments under the ancillary own funds item.</p> <p>(6) The insurance or reinsurance undertaking shall communicate to the supervisory authorities its own assessment of the liquidity position of the counterparties, taking into account the criteria referred to in points (a) to (c) of paragraph 5.</p> <p>(7) In accordance with Article 90(4)(a) of Directive 2009/138/EC, the supervisory authorities shall base their approval on an assessment of the counterparties' willingness to pay, taking into account the following:</p> <ul style="list-style-type: none"> (a) the range of circumstances under which the ancillary own funds item can be called up to absorb losses; (b) whether incentives or disincentives exist which may affect the counterparties' willingness to satisfy their commitments under the ancillary own funds item; (c) whether previous transactions between the counterparties and the insurance or reinsurance undertaking, including the counterparties' previous satisfaction of their commitments under ancillary own funds item, give an indication as to the counterparties' willingness to satisfy their current commitments under the ancillary own funds item. <p>(8) The insurance or reinsurance undertaking shall demonstrate to the supervisory authorities the counterparties' willingness to pay, taking into account points (a) to (c) of paragraph 7.</p> <p>(9) The supervisory authorities shall, in assessing the counterparties' ability and willingness to pay, consider any other factors relevant to the status of the counterparties including, where relevant, the insurance or reinsurance undertaking's business model.</p> <p>(10) Where an ancillary own-fund item concerns a group of counterparties, supervisory authorities and insurance and reinsurance undertakings may assess the status of the counterparties looking at a group of counterparties as though they were a single counterparty provided that:</p> <ul style="list-style-type: none"> (a) the counterparties are individually non-material; (b) the counterparties are sufficiently homogeneous; (c) the assessment of a group of counterparties does not overestimate the ability and willingness to pay of the counterparties included in that group. <p>(11) A counterparty shall be considered material if the status of that single counterparty is likely to have a disproportionate effect on the assessment of the group of counterparties' ability and willingness to pay.</p>
54 AOF4	<p>(1) In accordance with Article 90(4)(b) of Directive 2009/138/EC, the supervisory authorities shall base their approval on an assessment of the recoverability of the funds, taking into account the following:</p> <ul style="list-style-type: none"> (a) whether the recoverability of the funds is increased as a result of the availability of collateral or an analogous arrangement that satisfies the requirements in Articles SCRRM1 to SCRRM6 and where relevant Article SCRRM7; (b) whether the recoverability of the funds is clear of any current or foreseeable practical or legal impediments; (c) whether the recoverability of the funds is subject to legal or regulatory requirements; (d) the ability of the insurance or reinsurance undertaking to take

	<p>action to enforce the counterparties' satisfaction of their commitments under the ancillary own funds item.</p> <p>(2) The insurance or reinsurance undertaking shall demonstrate to the supervisory authorities the recoverability of the funds, taking into account the criteria referred to in points (a) to (d).</p>
55 AOF5	<p>(1) In accordance with Article 90(4)(c) of Directive 2009/138/EC, the supervisory authorities shall base their approval on an assessment of the information of past calls, taking into account the following:</p> <ul style="list-style-type: none"> (a) whether the insurance or reinsurance undertaking has past experience in recovering funds from the same or similar counterparties under the same or similar circumstances; (b) whether that information is relevant and reliable as regards the expected outcome of future calls. <p>(2) For the purposes of paragraph 1, the insurance or reinsurance undertaking shall provide the information relating to past calls to the supervisory authorities as part of its application for approval of ancillary own funds. The information shall include data relating to the undertaking seeking supervisory approval and may also include market data where the data are relevant to the undertaking seeking supervisory approval.</p>
56 AOF6	<p>(1) The supervisory authorities shall not approve an unlimited amount of ancillary own funds.</p> <p>(2) Where the supervisory authorities approve an amount of ancillary own funds, the decision of the supervisory authorities shall specify whether the amount that has been approved is the amount for which the insurance or reinsurance undertaking has applied or a lower amount.</p> <p>(3) Where the supervisory authorities approve a method to determine the amount of each ancillary own fund item, the supervisory authorities' decision shall set out the following:</p> <ul style="list-style-type: none"> (a) the initial amount of the ancillary own funds item that has been calculated using that method at the date the approval is granted; (b) the minimum frequency of recalculation of the amount of ancillary own funds item using that method if more frequent than annual, including the reasons for this frequency; (c) the time period for which the calculation of the ancillary own funds item using that method is granted.
57 AOF7	<p>(1) The insurance or reinsurance undertaking shall report to the supervisory authorities each time the Solvency Capital Requirement is calculated in accordance with Article 102 of Directive 2009/138/EC whether there have been any changes to the following that may reduce loss-absorbency of the ancillary own-fund item:</p> <ul style="list-style-type: none"> (a) the structure or contractual terms of the arrangement; (b) the status of the counterparties concerned; or (c) the recoverability of the ancillary own funds item. <p>Where applicable, the insurance or reinsurance undertaking shall provide details of the change to the supervisory authorities.</p> <p>(2) Notwithstanding paragraph 1, the insurance or reinsurance undertaking shall immediately inform the supervisory authorities of any material change in the loss-absorbency of the ancillary own-fund item.</p> <p>(3) The supervisory authorities shall monitor the appropriateness of the amount of ancillary own funds approved or the method to determine that amount and may revise that amount or its approval of the method for determining that amount where the supervisory authorities have received information, either by virtue of information provided pursuant to paragraphs 1 or 2 or otherwise, that</p>

	<p>there has been or may have been a material change in the loss-absorbency of the ancillary own-fund item.</p> <p>(4) For the purposes of this Article, a change shall be considered material if it is likely to have affected the amount of ancillary own-fund approved if it had been known by the supervisory authority at the time of approval.</p>
58 COF1	<p>The following basic own-fund items shall be deemed to substantially possess the characteristics set out in Article 93(1)(a) and (b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, where those items display the features set out in Article COF2:</p> <p>(1) the part of excess of assets over liabilities, valued in accordance with Article 75 and Section 2 of Chapter VI of Directive 2009/138/EC, comprising the following items:</p> <ul style="list-style-type: none"> (a) paid-in ordinary share capital and the related share premium account; (b) paid-in initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings; (c) paid-in subordinated mutual member accounts; (d) surplus funds that are not considered insurance and reinsurance liabilities in accordance with Article 91(2) of Directive 2009/138/EC; (e) paid-in preference shares and the related share premium account; (f) a reconciliation reserve; <p>(2) paid-in subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.</p>
59 COF2	<p>(1) The basic own-fund items listed in Article COF1 shall display the following features in order to be classified in Tier 1:</p> <ul style="list-style-type: none"> (a) the basic own fund item: <ul style="list-style-type: none"> (i) in the case of items referred to in points (a) and (b) of Article COF1(1), ranks after all other claims in the event of winding-up proceedings regarding the insurance or reinsurance undertaking; (ii) in the case of items referred to in points (1)(c), (e) and (2) of Article COF1, ranks to the same degree as, or ahead of, the items referred to in points (a) and (b) of Article COF1(1), but after items listed in Articles COF3 and COF7 that display the features set out in Article COF4 and COF8 respectively and after the claims of all policy holders and beneficiaries and non-subordinated creditors; (b) the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent; (c) the basic own fund item is immediately available to absorb losses; (d) the basic own-fund item absorb losses at least once there is non-compliance with the Solvency Capital Requirement and does not hinder the recapitalisation of the insurance or reinsurance undertaking; (d)bis the basic own-fund item, in the case of items referred to in points (1)(c), (e) and (2) of Article COF1, possesses one of the following principal loss absorbency mechanisms to be triggered at the trigger event specified in paragraph 6: <ul style="list-style-type: none"> (i) the nominal or principal amount of the basic own-fund item is written down as set out in paragraph 4; (ii) the basic own-fund item automatically converts into a basic

	<p>own-fund item listed in points (a) or (b) of Article COF1(1) as set out in paragraph 4bis; or</p> <p>(iii) a principal loss absorbency mechanism that achieves an equivalent outcome to the principal loss absorbency mechanisms set out in points (i) or (ii);</p> <p>(e) the basic own-fund item:</p> <p>(i) in the case of items referred to in points (a) and (b) of Article COF1(1), is undated or, where the insurance or reinsurance undertaking has a fixed maturity, is of the same maturity as the undertaking;</p> <p>(ii) in the case of items referred to in points (1)(c), (e) and (2) of Article COF1, is undated; the first contractual opportunity to repay or redeem the basic own-fund item does not occur before 5 years from the date of issuance;</p> <p>(e)bis a basic own-fund item referred to in points (1)(c), (e) and (2) of Article COF1 may only allow for repayment or redemption of that item between 5 and 10 years after the date of issuance where the undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking into account the solvency position of the undertaking including the undertaking's medium-term capital management plan.</p> <p>(f) the basic own-fund item, in the case of items referred to in points (1)(a), (b), (c), (e) and (2) of Article COF1, is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval;</p> <p>(f)bis the basic own-fund item, in the case of items referred to in points (1)(a), (b), (c), (e) and (2) of Article COF1, does not include any incentives to repay or redeem that item that increase the likelihood that an insurance or reinsurance undertaking will repay or redeem that basic own-fund item where it has the option to do so;</p> <p>(g) the basic own-fund item, in the case of items referred to in points (1)(a), (b), (c), (e) and (2) of Article COF1, provides for the suspension of repayment or redemption of that item in the event that there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement;</p> <p>(g)bis notwithstanding point (g), the basic own-fund item may only allow for repayment or redemption of that item in the event that there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where the following conditions are met:</p> <p>(i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item;</p> <p>(ii) the item is exchanged for or converted into another Tier 1 own-fund item of at least the same quality;</p> <p>(iii) the Minimum Capital Requirement is complied with after the repayment or redemption.</p> <p>(h) the basic own-fund item:</p> <p>(i) in the case of items referred to in points (a) and (b) of</p>
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	<p>Article COF1(1), either the legal or contractual arrangements governing the item or national legislation allow for the distributions in relation to that item to be cancelled in the event that there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;</p> <p>(ii) in the case of items referred to in points (1)(c), (e) and (2) of Article COF1 the terms of the contractual arrangement governing the own-fund item provide for the cancellation of distributions in relation to that item in the event that there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;</p> <p>(h)bis notwithstanding point (h), the basic own-fund item may only allow for a distribution to be made in the event that there is non-compliance with the Solvency Capital Requirement or the distribution on a basic-own fund item would lead to such non-compliance, where the following conditions are met:</p> <p>(i) the supervisory authority has exceptionally waived the cancellation of distributions;</p> <p>(ii) the distribution does not further weaken the solvency position of the insurance or reinsurance undertaking;</p> <p>(iii) the Minimum Capital Requirement is complied with after the distribution is made.</p> <p>(i) notwithstanding point (h), the basic own fund item, in the case of items referred to in points (1)(a), (b), (c), (e) and (2) of Article COF1, provides the insurance or reinsurance undertaking with full flexibility over the distributions on the basic own-fund item;</p> <p>(j) the basic own-fund item is free from encumbrances and is not connected with any other transaction, which when considered with the basic own-fund item, could result in that basic own-fund item not satisfying the requirements set out in Article 94(1) of Directive 2009/138/EC.</p> <p>(2) For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1 basic own-fund item or the repayment or redemption of a Tier 1 own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.</p> <p>(3) For the purpose of point (i) of paragraph 1,</p> <p>(a) full flexibility over the distributions, in the case of basic own-fund items referred to in points (a) and (b) of Article COF1(1), shall mean that:</p> <p>(i) there is no preferential distribution treatment regarding the order of distribution payments and the terms of the contractual arrangement governing the own-fund item do not provide preferential rights to the payment of</p>
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	<p>distributions;</p> <p>(ii) distributions are paid out of distributable items;</p> <p>(iii) the level of distributions is not determined on the basis of the amount for which the own-fund item was purchased at issuance and there is no cap or other restriction on the maximum level of distribution, except in the case of instruments issued by mutual and mutual-type undertakings;</p> <p>(iv) there is no obligation for an insurance or reinsurance undertaking to make distributions;</p> <p>(v) non-payment of distributions does not constitute an event of default of the insurance or reinsurance undertaking;</p> <p>(vi) the cancellation of distributions imposes no restrictions on insurance or reinsurance undertaking.</p> <p>(b) full flexibility over the distributions, in the case of basic own-fund items referred to in points (1)(c), (e) and (2) of Article COF1, shall mean that:</p> <p>(i) distributions are paid out of distributable items;</p> <p>(ii) insurance and reinsurance undertakings have full discretion at all times to cancel distributions in relation to the own-fund item for an unlimited period and on a non-cumulative basis and the institution may use the cancelled payments without restriction to meet its obligations as they fall due;</p> <p>(iii) there is no obligation to substitute the distribution by a payment in any other form;</p> <p>(iv) there is no obligation to make distributions in the event of a distribution being made on another own fund item;</p> <p>(v) non payment of distributions does not constitute an event of default of the insurance or reinsurance undertaking;</p> <p>(vi) the cancellation of distributions imposes no restrictions on the insurance or reinsurance undertaking.</p> <p>(4) For the purposes of point (1)(d)bis(i), the nominal or principal amount of the basic own-fund item shall be written down in such a way that all of the following are reduced:</p> <p>(a) the claim of the holder of that item in the event of winding-up proceedings;</p> <p>(b) the amount required to be paid on repayment or redemption of that item;</p> <p>(c) the distributions paid on that item.</p> <p>(4)bis For the purposes of point (1)(d)bis(ii), the provisions governing the conversion to the basic own-fund item listed in points (a) or (b) of Article COF1(1) shall specify either of the following:</p> <p>(a) the rate of conversion and a limit on the permitted amount of conversion;</p> <p>(b) a range within which the instruments will convert into the basic own funds item listed in points (a) or (b) of Article COF(1).</p> <p>(5) The nominal or principal amount of the basic own-fund item shall absorb losses at the trigger event. Loss absorbency resulting from the cancellation of, or reduction in, distributions shall not be deemed to be sufficient to meet the requirement in point (1)(d)bis for a principal loss absorbency mechanism.</p> <p>(6) The trigger event referred to in point (1)(d)bis is significant non-compliance with the Solvency Capital Requirement.</p>
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	<p>For the purposes of this paragraph, non-compliance with the Solvency Capital Requirement is significant where at least one of the following conditions is met:</p> <ul style="list-style-type: none"> (a) the amount of own-fund items eligible to cover the Solvency Capital Requirement is equal to or less than the 75 % of the Solvency Capital Requirement; (b) the amount of own-fund items eligible to cover the Minimum Capital Requirement is equal to or less than Minimum Capital Requirement; (c) compliance with the Solvency Capital Requirement is not re-established within a period of three months of the date when non-compliance was observed. <p>Undertakings may specify in the provisions governing the instrument one or more trigger events in addition to the events referred to in points (a) to (c).</p> <p>(7) For the purposes of points (d), (g) and (h) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement in the event that non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.</p>
60 COF3	<p>The following basic own-fund items shall be deemed to substantially possess the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, where those items display the features set out in Article COF4:</p> <ul style="list-style-type: none"> (1) the part excess of assets over liabilities, valued in accordance with Article 75 and Section 2 of Chapter VI of Directive 2009/138/EC, comprising the following items: <ul style="list-style-type: none"> (a) ordinary share capital and the related share premium account; (b) initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings; (c) subordinated mutual member accounts; (d) preference shares and the related share premium account; (2) Subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.
61 COF4	<ul style="list-style-type: none"> (1) The basic own-fund items listed in Article COF3 shall display the following features in order to be classified as Tier 2: <ul style="list-style-type: none"> (a) the basic own-fund item ranks after the claims of all policy holders and beneficiaries and non-subordinated creditors; (b) the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent; (c) the basic own-fund item is undated or has an original maturity of at least 10 years; the first contractual opportunity to repay or redeem the basic own-fund item does not occur before 5 years from the date of issuance; (d) the basic own-fund item is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval; (d)bis the basic own-fund item may include limited incentives to repay or redeem that basic own-fund item, provided that these do not occur before 10 years from the date of issuance; (e) the basic own-fund item provides for the suspension of repayment or redemption of that item in the event that there is non-

	<p>compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement;</p> <p>(e)bis notwithstanding point (e), the basic own-fund item may only allow for the repayment or redemption of that item in the event that there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where the following conditions are met:</p> <ul style="list-style-type: none"> (i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item; (ii) the item is exchanged for or converted into another Tier 1 or Tier 2 basic own-fund item of at least the same quality; (iii) the Minimum Capital Requirement is complied with after the repayment or redemption. <p>(f) the basic own-fund item,</p> <ul style="list-style-type: none"> (i) in the case of items referred to in points (a) and (b) of Article COF3(1), either the legal or contractual arrangements governing the item or national legislation allow for the distributions in relation to that item to be deferred in the event that there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement; (ii) in the case of items referred to in points (1)(c), (d) and (2) of Article COF3 the terms of the contractual arrangement governing the own-fund item provide for the distributions in relation to that item to be deferred in the event that there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement; <p>(f)bis notwithstanding point (f), the basic own-fund item may only allow for a distribution to be made in the event that there is non-compliance with the Solvency Capital Requirement or the distribution on a basic-own fund item would lead to such non-compliance, where the following conditions are met:</p> <ul style="list-style-type: none"> (i) the supervisory authority has exceptionally waived the deferral of distributions; (ii) the payment does not further weaken the solvency position of the insurance or reinsurance undertaking; (iii) the Minimum Capital Requirement is complied with after the distribution is made. <p>(g) the basic own-fund item is free from encumbrances and shall not be connected with any other transaction, which when considered with the basic own-fund item, could result in that basic own-fund item not satisfying the requirements set out in first subparagraph of</p>
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	<p>Article 94(2) of Directive 2009/138/EC.</p> <p>(h) the basic own-fund item displays the features set out in Article COF2 that are relevant for basic own-fund items referred to in points (1)(c), (e) and (2) of Article COF1, but exceeds the limit set out in Article EOF1(3).</p> <p>(2) For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1 or Tier 2 basic own-fund item or the repayment or redemption of a Tier 2 basic own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.</p> <p>(3) For the purposes of points (e) and (f) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement in the event that non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.</p>
62 COF5	<p>Without prejudice to Article 96 of Directive 2009/138/EC, the following ancillary own-fund items shall be deemed to substantially possess the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, where those items display the features set out in Article COF6:</p> <p>unpaid and uncalled ordinary share capital callable on demand;</p> <p>56. unpaid and uncalled initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings, callable on demand;</p> <p>57. unpaid and uncalled preference shares callable on demand;</p> <p>58. a legally binding commitment to subscribe and pay for subordinated liabilities on demand;</p> <p>59. letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with Directive 2006/48/EC;</p> <p>60. letters of credit and guarantees provided that the items can be called up on demand and are clear of encumbrances;</p> <p>61. any future claims which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part A of Annex 1 of Directive 2009/138/EC may have against their members by way of a call for supplementary contributions, within the following 12 months;</p> <p>62. any future claims which mutual or mutual-type associations may have against their members by way of a call for supplementary contributions, within the following 12 months, provided that a call can be made on demand and is clear of encumbrances;</p> <p>63. other legally binding commitments received by the insurance or reinsurance undertaking, provided that the item can be called up on demand and is clear of encumbrances.</p>
63 COF6	<p>The ancillary own-fund items listed in Article COF5 shall display the features of a basic own fund item classified in Tier 1 in accordance with Articles COF1 and COF2 once that item has been called up and paid in, in order to be classified as Tier 2.</p>
64 COF7	<p>The following basic own-fund items shall be deemed to possess the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, where those items display the features set out in Article COF8:</p>

	<p>(1) the part excess of assets over liabilities, valued in accordance with Article 75 and Section 2 of Chapter VI of Directive 2009/138/EC, comprising the following items:</p> <ul style="list-style-type: none"> (a) subordinated mutual member accounts; (b) preference shares and the related share premium account; (c) an amount equal to the value of net deferred tax assets; <p>(2) subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.</p>
65 COF8	<p>1. The basic own-fund items listed in Article COF7 shall display the following features in order to be classified as Tier 3:</p> <ul style="list-style-type: none"> (a) the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, ranks after the claims of all policy holders and beneficiaries and non-subordinated creditors; (b) the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent; (c) the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, is undated or has an original maturity of at least 5 years, where the maturity date is the first contractual opportunity to repay or redeem the basic own-fund item; (d) the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval; (d)bis the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, may include limited incentives to repay or redeem that basic own-fund item; (e) the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, provides for the suspension of repayment or redemption in the event that there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement; (e)bis notwithstanding point (e) of paragraph 1, the basic own-fund item may only allow for the repayment or redemption of that item in the event that there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where the following conditions are met: <ul style="list-style-type: none"> (i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item; (ii) the item is exchanged for or converted into another Tier 1, Tier 2 basic own-fund item or Tier 3 basic own-fund item of at least the same quality; (iii) the Minimum Capital Requirement is complied with after the repayment or redemption. (f) the basic own-fund item, in the case of items referred to in points (1)(a), (b) and (2) of Article COF7, provides for the deferral of

	<p>distributions in the event that there is non-compliance with the Minimum Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Minimum Capital Requirement and the distribution would not lead to non-compliance with the Minimum Capital Requirement;</p> <p>(g) the basic own-fund item is free from encumbrances and is not connected with any other transaction, which when considered with the subordinated liability, could undermine the features that the item is required to possess in accordance with this Article.</p> <p>2. For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1, Tier 2 basic own-fund item or Tier 3 basic own-fund item or the repayment or redemption of a Tier 3 basic own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.</p> <p>3. For the purposes of point (e) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement in the event that non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.</p>
66 COF9	All ancillary own-fund items that have been approved by the supervisory authority in accordance with Article 90 of Directive 2009/138/EC, but which do not display the features in Article COF6 shall be classified as Tier 3 ancillary own funds.
67 COF10	<p>64. Without prejudice to Article 90 of Directive 2009/138/EC, where an own-fund item is not included in the list of own-funds set out in Articles COF1, COF3, COF5, COF7 and COF9, which display the features set out in Articles COF2, COF4, COF6 and COF8 respectively, insurance or reinsurance undertakings shall not consider that item as own funds, unless an approval of the item's assessment and classification has been received by the supervisory authority.</p> <p>65. The supervisory authority shall assess, on the basis of documents submitted by the insurance or reinsurance undertaking, the following, when approving the assessment and classification of own-fund items not included in the list of own-fund items set out in Articles COF1, COF3, COF5, COF7 and COF9:</p> <p>(a) where the undertaking is applying for approval for classification in Tier 1, whether the basic own-fund item substantially possesses the characteristics set out Article 93(1)(a) and (b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;</p> <p>(b) where the undertaking is applying for classification in Tier 2 basic own funds, whether the basic own-fund item substantially possesses the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;</p> <p>(c) where the undertaking is applying for classification in Tier 2 ancillary own funds, whether the ancillary own-fund item substantially possesses the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;</p> <p>(d) where the undertaking is applying for classification in Tier 3 basic own funds, whether the basic own-fund item possesses the characteristics in Article 93(1)(b) of Directive 2009/138/EC, taking</p>

	<p>into consideration the features set out in Article 93(2) of that Directive;</p> <p>(e) the legal effectiveness and enforceability of the contractual terms of the own-fund item in all relevant jurisdictions;</p> <p>(f) whether the own-fund item has been fully paid-in.</p> <p>66. Basic own-fund items not included in the list of own-fund items set out in Articles COF1, COF3 and COF7 shall only be classified as Tier 1 basic own funds where they are fully paid-in.</p> <p>67. The inclusion of own-fund items approved by the supervisory authority in accordance with this Article shall be subject to quantitative limits defined in Article EOF1.</p>
310 SPV2	<p>Scope of Authorisation</p> <p>The authorisation of a special purpose vehicle by the supervisory authority of the Member State in whose territory the special purpose vehicle is establishing its head office shall be subject to the following conditions being fulfilled:</p> <p>(a) the special purpose vehicle assumes risks from an insurance or reinsurance undertaking through reinsurance contracts or assumes insurance risks through similar arrangements;</p> <p>(b) where the special purpose vehicle assumes risks from more than one insurance or reinsurance undertaking, the solvency of that special purpose vehicle is not adversely affected by winding-up proceedings of any one of those insurance or reinsurance undertakings;</p> <p>(c) the contractual arrangements relating to the transfer of risk from an insurance or reinsurance undertaking to the special purpose vehicle and the investment in assets by the special purpose vehicle fulfil the conditions set out in Articles SPV3 to SPV5;</p> <p>(d) the persons that effectively run the special purpose vehicle satisfy the conditions in Article SPV7;</p> <p>(e) the shareholders or members having a qualifying holding within the meaning of Article 13(21) of Directive 2009/138/EC in the special purpose vehicle satisfy the conditions set out in Article SPV8;</p> <p>(f) the special purpose vehicle has an effective system of governance and meets the conditions set out in Article SPV9;</p> <p>(g) the special purpose vehicle is capable of meeting the requirements in Article SPV10;</p> <p>(h) the special purpose vehicle satisfies the requirements set out in Articles SPV11 and SPV6.</p>
311 SPV3	<p>Fully Funded</p> <p>The contractual arrangements relating to the transfer of risk from an insurance or reinsurance undertaking to a special purpose vehicle shall ensure that the special purpose vehicle is at all times fully funded in accordance with Article SPV11.</p>
312 SPV4	<p>Effective transfer of risk</p> <p>1. The contractual arrangements relating to the transfer of risk from an insurance or reinsurance undertaking to a special purpose vehicle and from the special purpose vehicle to the providers of debt or financing shall ensure that</p> <p>(a) the transfer of risk is effective in all circumstances;</p> <p>(b) the extent of risk transfer is clearly defined and incontrovertible.</p> <p>2. The transfer of risk shall not be deemed to be effective in all circumstances where there are connected transactions which could undermine the effective transfer of risk.</p>

313 SPV5	<p>Rights of the providers of debt or financing mechanisms</p> <p>The contractual arrangements relating to the transfer of risk from an insurance or reinsurance undertaking to a special purpose vehicle and from the special purpose vehicle to the providers of debt or finance shall ensure that</p> <ul style="list-style-type: none"> (a) the claims of the providers of debt or financing mechanisms are at all times subordinated to the reinsurance obligations of the special purpose vehicle to the insurance or reinsurance undertaking; (b) no payments are made to the providers of debt or financing, if following those payments the special purpose vehicle would no longer be fully funded; (c) the providers of debt or finance to the special purpose vehicle have no rights of recourse to the assets of the insurance or reinsurance undertaking; (d) the providers of debt or finance to the special purpose vehicle have no rights to apply for the winding-up of the special purpose vehicle.
315 SPV7	<p>Fit and proper requirements of persons who effectively run a special purpose vehicle</p> <ol style="list-style-type: none"> 1. All persons who effectively run a special purpose vehicle shall at all times fulfil the requirements set out in Article 42(1) of Directive 2009/138/EC. 2. Special purpose vehicles shall notify the supervisory authorities of the identity of the persons who effectively run the special purpose vehicle and demonstrate to the supervisory authorities that those persons meet the requirements set out in Article 42(1) of Directive 2009/138/EC. 3. Special purpose vehicles shall notify the supervisory authorities of any changes in the identity of the persons who effectively run the special purpose vehicle and provide the supervisory authorities with all information needed to assess whether any new persons appointed to manage the special purpose vehicle are fit and proper in accordance with Article 42(2). 4. Special purpose vehicles shall notify the supervisory authorities if any of the persons who effectively run a special purpose vehicle have been replaced because they no longer fulfil the requirements set out in Article 42(1) of Directive 2009/138/EC.
316 SPV8	<p>Fit and proper requirements for shareholders or members with a qualifying holding</p> <ol style="list-style-type: none"> 1. The assessment of whether the shareholders or members having a qualifying holding within the meaning of Article 13(21) of Directive 2009/138/EC in a special purpose vehicle are fit and proper shall take into account the following criteria: <ul style="list-style-type: none"> (a) the reputation and integrity of the shareholder or member having a qualifying holding in the special purpose vehicle; (b) the financial soundness of the shareholder or member having a qualifying holding in the special purpose vehicle; (c) the level of influence that the shareholder or member having a qualifying holding in the special purpose vehicle will exercise over the special purpose vehicle; (d) whether there are reasonable grounds to suspect that, in connection with the qualifying holding of the shareholder or members having a qualifying holding in the special purpose vehicle, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist

	<p>financing is being or has been committed or attempted, or that the qualifying holding could increase the risk thereof.</p> <p>2. Special purpose vehicles shall notify the supervisory authorities of the identity of the persons who are shareholders or members having a qualifying holding in the special purpose vehicle.</p>
317 SPV9	<p>Sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements</p> <p>1. Special purpose vehicles shall have an effective system of governance which provides for sound and prudent management of the special purpose vehicle and that is appropriate to the nature, scale and complexity of the risks it assumes and the uses for which it is authorised.</p> <p>2. The system of governance of the special purpose vehicle shall consist of:</p> <ul style="list-style-type: none"> (a) written policies in relation to at least risk management, internal control, administrative and accounting procedures and, where relevant, outsourcing; the written policies shall comprise policies relating to the areas set out in Article 44(2)(a) to (f) of Directive 2009/138/EC to the extent that these are relevant taking into account the uses of the special purpose vehicle; (b) effective internal controls to ensure that the mandatory contract conditions in Section 2 and the requirements in Section 5 are fulfilled on an ongoing basis; (c) an effective risk-management system comprising processes and reporting procedures necessary to identify, measure, monitor, manage and report, on an ongoing basis the risk to which the special purpose vehicle could be exposed. <p>3. Special purpose vehicles shall ensure that the policies referred to in point (a) of paragraph 2 are implemented effectively.</p>
318 SPV10	<p>Supervisory reporting</p> <p>1. The supervisory authorities in the Member State in which the special purpose vehicle is established may request such information from the special purpose vehicle as is necessary in order to supervise the special purpose vehicle.</p> <p>2. Special purpose vehicles shall report the following information to the supervisory authorities of the Member State in which the special purpose vehicle is established:</p> <ul style="list-style-type: none"> (a) the value of the assets of the special purpose vehicle valued in accordance with Article 75 of Directive 2009/138/EC distinguished by material class and a description of the basis, methods and assumptions used for their valuation; (b) the aggregate maximum risk exposure of the special purpose vehicle and a description of the basis, methods and assumptions used for the determination of the aggregate maximum risk exposure; (c) conflicts of interest between the special purpose vehicle, the insurance or reinsurance undertakings and the providers of debt or finance; (d) significant transactions entered into by the special purpose vehicle during the last reporting period. <p>3. Special purpose vehicles shall submit the report referred to in paragraph 2 at least annually.</p> <p>4. Special purpose vehicles shall submit the report referred to in paragraph 2:</p> <ul style="list-style-type: none"> (a) no later than 20 weeks after the special purpose vehicle's financial year end for the financial year ending 30 June 2016 but before 1

	<p>January 2017;</p> <p>(b) no later than 18 weeks after the special purpose vehicle’s financial year end for the financial year ending on or after 1 January 2017 but before 1 January 2018;</p> <p>(c) no later than 16 weeks after the special purpose vehicle’s financial year end for the financial year ending on or after 1 January 2018 but before 1 January 2019;</p> <p>(d) no later than 14 weeks after the special purpose vehicle’s financial year end for financial years ending after 1 January 2019.</p> <p>5. Special purpose vehicles shall immediately inform the supervisory authorities in the Member State in which the special purpose vehicle is established of any changes that could affect the compliance by the special purpose vehicle with the requirements set out in Articles SPV2 to SPV9 and Article SPV11.</p>
319 SPV11	<p>Solvency requirements</p> <p>1. In order to be considered fully funded special purpose vehicles shall satisfy the following conditions :</p> <p>(a) the assets of the special purpose vehicle are valued in accordance with Article 75 of Directive 2009/138/EC;</p> <p>(b) the special purpose vehicle has at all times assets the value of which is equal to or exceeds the aggregate maximum risk exposure and the special purpose vehicle is able to pay the amounts it is liable for as they fall due;</p> <p>(c) the proceeds of the debt issuance or other financing mechanism are fully paid-in.</p> <p>2. The assessment by supervisory authorities of whether the special purpose vehicle has at all times assets the value of which is equal to or exceeds the aggregate maximum risk exposure and the special purpose vehicle is able to pay the amounts it is liable for as they fall due, shall take into account:</p> <p>(a) the liquidity risk of the special purpose vehicle;</p> <p>(b) the quantifiable risks of the special purpose vehicle;</p> <p>(c) the arrangements for holding assets in the special purpose vehicle.</p> <p>3. The special purpose vehicle shall demonstrate to the supervisory authorities in its report referred to in Article SPV10(2) and on request by the supervisory authorities that it satisfies the requirements set out in paragraph 1 and report on points (a) to (b) in paragraph 2.</p> <p>4. Payments relating to existing insurance and reinsurance contracts, that are expected to be received in the future by the special purpose vehicle from the insurance or reinsurance undertaking that has transferred risk to the special purpose vehicle, may be included in the assets of the special purpose vehicle, provided that the following conditions are met:</p> <p>(a) the future liabilities of the special purpose vehicle to the providers of debt or finance only arise subject to the receipt of the payments from the insurance or reinsurance undertaking that has transferred risk to the special purpose vehicle;</p> <p>(b) there is no scenario under which the basic own funds of the insurance or reinsurance undertaking which has transferred risks to the special purpose vehicle would be negatively affected by the payment not being received by the special purpose vehicle;</p> <p>(c) the special purpose vehicle continues to meet the conditions set out in paragraph 1 in the event that the payments from the insurance or reinsurance undertaking that has transferred risk to the special purpose vehicle payments are not received;</p>

	<p>(d) the payments do not relate to expenses that are excluded from the aggregate maximum risk exposure as defined in point (41) of Article 1bis.</p>
314 SPV6	<p>Solvency requirements on investments Special purpose vehicles shall invest all their assets in accordance with the conditions specified in points (a) to (g):</p> <ul style="list-style-type: none"> (a) with respect to the whole portfolio of assets, special purpose vehicles shall only invest in assets and instruments whose risk the special purpose vehicle can properly identify, measure, monitor, manage, control and report; (b) assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability; (c) all assets shall be invested in a manner appropriate to the nature and duration of the special purpose vehicle's liabilities. All assets shall be invested in the best interest of the insurance and reinsurance undertakings transferring risks to the special purpose vehicle; (d) the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management; (e) investments and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels; (f) assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole; (g) investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the special purpose vehicle to excessive risk concentration.
197 USP2	<p>Data used to calculate undertaking-specific parameters shall only be considered to be complete, accurate and appropriate where they satisfy the following criteria:</p> <ul style="list-style-type: none"> (a) the data meet the conditions set out in Article 14(1) to (3), and the insurance or reinsurance undertaking complies in relation to that date with the requirements set out in Article TP3(4), where any reference to the calculation of technical provisions shall be understood as referring to the calculation of the undertaking-specific parameter; (b) the data are capable of being incorporated into the standardised methods; (c) the data do not prevent the insurance or reinsurance undertaking from complying with the requirements of Article 101(3) of Directive 2009/13/EC; (d) the data meet any additional data requirement necessary to use each standardised method. (e) the data and its production are thoroughly documented, including: <ul style="list-style-type: none"> (i) the collection of data and analysis of its quality; (ii) the choice of assumptions used in the production and adjustment of the date, including adjustments with regard to reinsurance and catastrophe claims and about the allocation of expenses;

	<p>(iii) the selection and application of actuarial and statistical methods for the production and the adjustment of the data;</p> <p>(iv) the validation of the data.</p> <p>For the purposes of point (e)(i), the documentation referred to in point (e) shall include a directory of the data, specifying their source, characteristics and usage and the specification for the collection, processing and application of the data;</p> <p>For the purposes of point (e)(ii), the documentation referred to in point (e) shall include a directory of all the relevant assumptions that the calculation of technical provisions are based upon and a justification for the choice of the assumptions;</p> <p>2. Where external data are used, they shall satisfy the following additional criteria:</p> <p>(a) the process for collecting data is transparent, auditable and known by the insurance or reinsurance undertaking that uses the data to calculate undertaking-specific parameters on its basis;</p> <p>(b) where the data stem from different sources, the assumptions made in the collection, processing and application of data ensure that the data are comparable;</p> <p>(c) the data stem from insurance and reinsurance undertakings whose business and risk profile is similar to that of the insurance or undertaking whose undertaking-specific parameter is calculated in the basis of those data;</p> <p>(e) undertakings using the external data are able to verify that there is sufficient statistical evidence that the probability distributions underlying their own data and that of the underlying external data have a high degree of similarity, in particular with respect to the level of volatility they reflect.</p> <p>(f) external data only comprises data from undertakings with a similar risk profile and this risk profile is similar to the risk profile of the undertaking using the data, in particular that the external data comprise data from undertakings whose business nature and risk profile with respect to the external data is similar and for which there is sufficient statistical evidence that the probability distributions underlying the external data will exhibit a high degree of homogeneity.</p>
42	<p>The mortality risk stress referred to in Article 77b(1)(f) of Directive 2009/138/EC shall be the more adverse of the following two scenarios:</p> <p>(a) an instantaneous permanent increase of 15% in the mortality rates used for the calculation of the best estimate;</p> <p>(b) an instantaneous increase of 0.15 percentage points to the mortality rates (expressed as percentages) which are used in the calculation of technical provisions to reflect the mortality experience in the following 12 months.</p> <p>2. For each of the scenarios set out in points (a) and (b) of paragraph 1 the increase in mortality rates shall only apply to those insurance policies for which the increase in mortality rates leads to an increase in technical provisions taking into account the following:</p> <p>(a) multiple insurance policies in respect of the same insured person may be treated as if they were one insurance policy;</p> <p>(b) where the calculation of technical provisions is based on groups of policies as referred to in Article TP16, the identification of the</p>

	<p>policies for which technical provisions increase under an increase of mortality rates may also be based on those groups of policies instead of single policies, provided that it would give approximately the same result;</p> <p>3. With regard to reinsurance policies, the identification of the policies for which technical provisions increase under an increase of mortality rates shall apply to the underlying insurance policies only and shall be carried out in accordance with paragraph 2.</p>
70 RFFOF 2	<p>70. Insurance and reinsurance undertakings shall determine the amount that the reconciliation reserve shall be reduced by comparing the following amounts:</p> <ul style="list-style-type: none"> (a) the restricted own-fund items within the ring-fenced fund or matching adjustment portfolio; (b) the notional Solvency Capital Requirement for the ring-fenced fund or matching adjustment portfolio. <p>Where the insurance or reinsurance undertaking calculates the Solvency Capital Requirement using the standard formula, the notional Solvency Capital Requirement shall be calculated in accordance with Article RFFSCR2.</p> <p>Where the undertaking calculates the Solvency Capital Requirement using an internal model, the notional Solvency Capital Requirement shall be calculated using that internal model, as if the undertaking pursued only the business included in the ring-fenced fund.</p> <p>71. Where a ring-fenced fund is not material, insurance and reinsurance undertakings may, as an alternative to the approach set out in paragraph 1, reduce the reconciliation reserve by the total amount of restricted own-fund items.</p>
194 RFFSCR 1	<p>1. In the case of ring-fenced funds determined in accordance with Article RFFOF2 or in the case insurance or reinsurance undertakings have received approval to apply a matching adjustment to the risk-free interest term structure in accordance with Article 77b of Directive 2009/138/EC, insurance and reinsurance undertakings shall make an adjustment to the calculation of the Solvency Capital Requirement following the method that is set out in Article RFFSCR2.</p> <p>2. Notwithstanding paragraph 1, where an insurance or reinsurance undertaking has received supervisory approval to apply the provisions set out in Article 304 of Directive 2009/138/EC to a ring-fenced funds, it shall not adjust the calculation in accordance with Article RFFSCR2, but base the calculation of the assumption of full diversification between the assets and liabilities of the ring-fenced funds and the rest of the undertaking.</p>
195 RFFSCR 2	<p>1. Insurance and reinsurance undertakings shall calculate a notional Solvency Capital Requirement for each ring-fenced fund and each matching adjustment portfolio, as well as for the remaining part of the undertaking, in the same manner as if those ring-fenced funds and matching adjustment portfolio and the remaining part of the undertaking were separate undertakings.</p> <p>2. Insurance and reinsurance undertakings shall calculate their Solvency Capital Requirement as the sum of the notional Solvency Capital Requirements for each of the ring-fenced funds and each matching adjustment portfolio and for the remaining part of the undertaking.</p> <p>3. Where the calculation of the capital requirement for a risk module or sub-module of the Basic Solvency Capital Requirement is based on the impact of a scenario on the basic own funds of the insurance or reinsurance undertaking, the impact of the scenario on the basic own funds at the level of the ring-fenced fund and matching adjustment portfolio and the remaining part of the undertaking shall be calculated.</p>

	<p>4. The basic own funds at the level of the ring-fenced fund or matching adjustment portfolio shall be those restricted own-fund items that meet the definition of basic own funds set out in Article 88 of Directive 2009/138/EC.</p> <p>5. Where profit participation arrangements exist in the ring-fenced fund, insurance and reinsurance undertakings shall apply the following approach when adjusting the Solvency Capital Requirement:</p> <ul style="list-style-type: none"> (a) where the calculation referred to in paragraph 3 would result in an increase in the basic own funds at the level of the ring-fenced fund, the estimated change in those basic own funds shall be adjusted to reflect the existence of profit participation arrangements in the ring-fenced fund; in this case, the adjustment to the change in the basic own funds of the ring-fenced fund shall be the amount by which technical provisions would increase due to the expected future distribution to policy holders or beneficiaries of that ring-fenced fund; (b) where the calculation referred to in paragraph 3 would result in a decrease in the basic own funds at the level of the ring-fenced fund, the estimated change in those basic own funds for the calculation of the net Basic Solvency Capital Requirement, as referred to in Article [ALAC2](2), shall be adjusted to reflect the reduction in future discretionary benefits payable to policy holders or beneficiaries of that ring-fenced fund; the adjustment shall not exceed the amount of future discretionary benefits within the ring-fenced fund. <p>6. Notwithstanding the requirement to calculate the Solvency Capital Requirement for each ring-fenced fund and each matching adjustment portfolio in the same manner as if those ring-fenced funds and matching adjustment portfolios were separate undertakings, the notional Solvency Capital Requirement for each ring-fenced fund and each matching adjustment portfolio shall be calculated using the scenario-based calculations under which basic own funds for the undertaking as a whole are most negatively affected.</p> <p>7. For the purpose of determining the scenario under which basic own funds are most negatively affected for the undertaking as a whole, the undertaking shall first calculate the sum of the results of the impacts of the scenarios on the basic own funds at the level of each ring-fenced fund and each matching adjustment portfolio, in accordance with paragraphs 3 and 5. The totals at the level of each ring-fenced fund and each matching adjustment portfolio shall be added to one another and to the results of the impact of the scenarios on the basic own funds in the remaining part of the insurance or reinsurance undertaking.</p> <p>8. The notional Solvency Capital Requirement for each ring-fenced fund and each matching adjustment portfolio shall be determined by aggregating the capital requirements for each sub-module and risk module of the Basic Solvency Capital Requirement.</p> <p>9. Insurance and reinsurance undertakings shall assume that there is no diversification of risks between each of the ring-fenced funds and each matching adjustment portfolio and the remaining part of the insurance or reinsurance undertaking.</p>
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