



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Policy Notice – Ring Fenced Funds – 2018

1. Background

- 1.1 Solvency II contains provisions affecting the determination of an undertaking's own funds and solvency capital requirement ('SCR') where Ring Fenced Funds ('RFF') arise. An assessment of whether an arrangement gives rise to an RFF is based on restrictions on the use of certain assets or own funds and on the characteristics of the individual arrangement.
- 1.2 This Notice specifies the Central Bank of Ireland's (hereafter 'Central Bank') policy position and guidance in relation to the assessment of arrangements which may be subject to an RFF classification under Solvency II. This notice replaces Policy Notice - November 2015 "Solvency II – Ring Fenced Funds".
- 1.3 In assessing whether arrangements should be subject to an RFF classification under Solvency II, undertakings should refer to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015), the Delegated Regulations¹ and the EIOPA Guidelines on Ring Fenced Funds².
- 1.4 Please note that in this Notice "undertaking" refers to both insurance and reinsurance undertakings.
- 1.5 This Notice offers a non-exhaustive list of criteria that undertakings should consider when assessing whether certain arrangements could be subject to an RFF classification under Solvency II.
- 1.6 The Central Bank may periodically update elements of this Notice to reflect changes in Central Bank policy or other developments stemming from, inter alia, changes to EU Regulations.
- 1.7 This Notice is applicable to all insurance and reinsurance undertakings within the scope of Solvency II, as well as insurance and reinsurance groups within the scope of Solvency II for which the Central Bank is the group supervisor.

¹ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance

² As issued by EIOPA on 02/02/2015 <https://eiopa.europa.eu/publications/eiopa-guidelines/guidelines-on-ring-fenced-funds>

- 1.8 It is the responsibility of each undertaking to assess all relevant arrangements and determine whether each such arrangement should be classified as an RFF. Undertakings should be mindful that they may be required to justify the basis for such determinations to the Central Bank, and should ensure that all material used in the assessment is retained and available.
- 1.9 In accordance with Recital 39 of the Delegated Regulations, RFF designation should be limited to arrangements that reduce the capacity to absorb losses on a going-concern basis. Arrangements that only affect loss absorbency in the case of winding-up should not be considered as an RFF.
- 1.10 Undertakings with reinsurance collateral arrangements should be especially mindful of the rules regarding RFF. Guideline 2(d) of the EIOPA Guidelines on RFF states that conventional reinsurance is not intended to be within the scope of RFF; however this is only to be the case where the individual contracts do not give rise to restrictions on the assets of the undertaking. It should be noted therefore that certain reinsurance arrangements may result in an RFF classification.
- 1.11 Where undertakings assess certain arrangements which exhibit characteristics of RFF and determine from the assessment that these arrangements should not be classified as RFF, the undertakings concerned should ensure that they are aware of, and understand, any risks associated with the arrangement and that those risks are appropriately considered and provided for. Particular attention should be afforded to any liquidity, timing or counterparty exposures.

2. Assessment of RFF

- 2.1 Restrictions on an undertaking's assets or own funds may result in an RFF classification, however the Central Bank's policy position is that it is not possible to generalise where an RFF classification will arise. Instead, the characteristics of the specific arrangement should be analysed and decisions made based on the specifics of the case and the facts of each arrangement.
- 2.2 In accordance with Article 80 of the Delegated Regulations, in determining whether an RFF classification applies, an undertaking will need to assess whether any own-fund items have a reduced capacity to fully absorb losses on a going-concern basis due to their lack of transferability within the undertaking.
- 2.3 As per Guideline 1 of the EIOPA Guidelines on RFF, the existence of a restriction on assets in relation to certain liabilities on a going-concern basis which would lead to restricted own funds within the business of an undertaking is the defining characteristic of an RFF.
- 2.4 Undertakings should consider all restrictions on assets and own funds at the time they calculate their SCR, even in cases where the restriction applies for a limited period. In the event that the restriction ceases to apply, this would be reflected in subsequent calculations of the undertaking's SCR.
- 2.5 Undertakings should determine the scope of the restriction on the undertaking's assets and own funds which should be taken into account in the assessment.
- 2.6 In relation to reinsurance collateral arrangements, in assessing the scope of any restriction, the undertaking should consider how collateral is provided or secured.
- 2.7 Given the restrictions on assets that generally result from the nature and regulatory context of with-profits business in Ireland, the Central Bank expects that these restrictions will generally mean that such with-profits funds will display the characteristic of an RFF.
- 2.8 In making an assessment of an arrangement for RFF classification, consideration should be given to at least the following, where relevant:
 - i. The particular nature of the arrangement;
 - ii. The specific wording, structure and all relevant contractual terms of the arrangement;

- iii. Whether there are restrictions on assets in relation to certain liabilities on a going concern basis;
- iv. Whether certain policyholders have distinct rights relative to other business written by the undertaking;
- v. The nature, terms and degree of any restrictions on assets;
- vi. Whether there are restrictions on the use of assets, and the return on such assets, within one fund to meet liabilities or losses arising outside that fund;
- vii. Whether own funds are, or could be, restricted;
- viii. Whether surpluses are freely available to the undertaking and can be freely extracted as they arise and in a timely manner, particularly in stressed circumstances;
- ix. Whether there is profit sharing within the RFF whereby policyholders receive a minimum proportion of profits generated in the fund;
- x. Whether there are any operational or complex issues involved in the accessing or unwinding of assets;
- xi. Whether the arrangement displays the characteristics of a separate undertaking;
- xii. Whether ownership of the assets remains with the undertaking;
- xiii. The frequency of the recalculation of the exposure and rebalancing of any collateral;
and
- xiv. Whether funds are subject to restrictions or arrangements specified in national law.

2.9 The list detailed in 2.8 above is not intended to be exhaustive and undertakings should ensure they consider all such other facts or features as may be considered relevant

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