

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

TITLE I

[<sup>X1</sup>VALUATION AND RISK-BASED CAPITAL REQUIREMENTS  
(PILLAR I), ENHANCED GOVERNANCE (PILLAR II)  
AND INCREASED TRANSPARENCY (PILLAR III)]

CHAPTER XV

SPECIAL PURPOSE VEHICLES

SECTION I

*Authorization*

*Article 318*

The authorisation of a special purpose vehicle by the supervisory authority <sup>F1</sup>... shall be subject to all of the following conditions:

- (a) the special purpose vehicle assumes risks from an insurance or reinsurance undertaking through reinsurance contracts or assumes insurance risks through similar arrangements;
- (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;
- (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 319 to 321;
- (d) the persons that effectively run the special purpose vehicle satisfy the requirements referred to in Article 322;
- (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 323;
- (f) the special purpose vehicle has an effective system of governance and meets the requirements set out in Article 324;
- (g) the special purpose vehicle is capable of meeting the requirements referred to in Article 325;
- (h) the special purpose vehicle satisfies the requirements set out in Articles 326 and 327.

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**Changes to legislation:** Commission Delegated Regulation (EU) 2015/35, CHAPTER XV is up to date with all changes known to be in force on or before 11 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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### Textual Amendments

- F1** Words in [Art. 318](#) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(58)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

## SECTION 2

### **Mandatory contract conditions**

#### *Article 319*

#### **Fully Funded**

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 326.

#### *Article 320*

#### **Effective transfer of risk**

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 all of the following:

- a the transfer of risk is effective in all circumstances;
- b the extent of risk transfer is clearly defined and incontrovertible.

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.

#### *Article 321*

#### **Rights of the providers of debt or financing mechanisms**

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 all of the following:

- (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;

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- (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.

### SECTION 3

#### *System of governance*

##### *Article 322*

#### **Fit and proper requirements of persons who effectively run a special purpose vehicle**

- 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 run the special purpose vehicle are fit and proper in accordance with Article 42(1) of Directive 2009/138/EC.
- 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.

##### *Article 323*

#### **Fit and proper requirements for shareholders or members with a qualifying holding**

- 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 all of the following criteria:
  - 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<sup>(1)</sup> is being or has been committed or attempted, or that the qualifying holding could increase the risk thereof.

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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.

#### Article 324

##### **Sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements**

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.

2 The system of governance of the special purpose vehicle shall consist of all of the following:

- 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.

3 Special purpose vehicles shall ensure that the policies referred to in point (a) of paragraph 2 are implemented effectively.

#### SECTION 4

##### **Supervisory reporting**

#### Article 325

##### **Supervisory reporting**

1 The supervisory authorities <sup>F2</sup>... may request such information from the special purpose vehicle as is necessary in order to supervise the special purpose vehicle.

2 Special purpose vehicles shall report all of the following information to the supervisory authorities <sup>F3</sup>...:

- 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;

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- d significant transactions entered into by the special purpose vehicle during the last reporting period.
- 3 Special purpose vehicles shall submit the report referred to in paragraph 2 at least annually.
- 4 Special purpose vehicles shall submit the report referred to in paragraph 2:
- a no later than 20 weeks after the special purpose vehicle's financial year end for the financial year ending on or after 30 June 2016 but before 1 January 2017;
  - 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;
  - 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;
  - d no later than 14 weeks after the special purpose vehicle's financial year end for financial years ending on or after 1 January 2019.
- 5 Special purpose vehicles shall immediately inform the supervisory authorities <sup>F4</sup>... of any changes that could affect the compliance by the special purpose vehicle with Articles 318 to 324 and Article 326.

#### Textual Amendments

- F2** Words in Art. 325(1) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(59)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)
- F3** Words in Art. 325(2) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(59)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)
- F4** Words in Art. 325(5) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(59)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

## SECTION 5

### *Solvency requirements*

#### *Article 326*

### **Solvency requirements**

- 1 In order to be considered fully funded special purpose vehicles shall satisfy all of the following requirements:
- a the assets of the special purpose vehicle are valued in accordance with Article 75 of Directive 2009/138/EC;
  - 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;
  - c the proceeds of the debt issuance or other financing mechanism are fully paid-in.
- 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

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and the special purpose vehicle is able to pay the amounts it is liable for as they fall due, shall take into account all of the following:

- a the liquidity risk of the special purpose vehicle;
- b the quantifiable risks of the special purpose vehicle;
- c the arrangements for holding assets in the special purpose vehicle.

3 The special purpose vehicle shall demonstrate to the supervisory authorities in its report referred to in Article 325(2) and on request by the supervisory authorities that it satisfies the requirements set out in paragraph 1 and it shall report on points (a) and (b) of paragraph 2.

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 all of the following requirements are met:

- 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;
- 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;
- 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 are not received;
- [<sup>F5</sup>d the payments do not relate to expenses that are excluded from the aggregate maximum risk exposure as defined in point (44) of Article 1.]

#### Textual Amendments

- F5** Substituted by [Commission Delegated Regulation \(EU\) 2019/981 of 8 March 2019 amending Delegated Regulation \(EU\) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\) \(Text with EEA relevance\).](#)

### Article 327

#### Solvency requirements on investments

Special purpose vehicles shall invest all their assets in accordance with all of the following requirements:

- (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;

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- (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.

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- (1) 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 purposes of money laundering and terrorist financing ([OJ L 309, 25.11.2005, p. 15](#)).



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### Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)
- Recital 53 Sentence 1 replacement by [EUR 2016/2283](#) Regulation

### Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 177(2)(b) words omitted by [S.I. 2019/407 reg. 11\(25\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words omitted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words substituted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(r) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(s) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(t) words substituted by [S.I. 2019/407 reg. 11\(25\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(a) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(c) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)