

FCA Statement – authorising and supervising insurance special purpose vehicles

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Contents

1	Introduction	3
2	Authorisation of ISPVs and Protected Cell Companies (PCCs)	4
3	Registering of MISPVs as PCCs	7
4	Supervision of ISPVs	8
Annex 1		
	Abbreviations used in this paper	9

How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations



1 Introduction

- 1.1** In this Statement the Financial Conduct Authority (FCA) sets out its approach and expectations when authorising and supervising insurance special purpose vehicles (ISPVs) in line with the FCA's objectives and Threshold Conditions. This statement should be read in conjunction with our Policy Statement 17/24 '*Handbook changes to reflect the new regulatory framework for Insurance-Linked Securities – Feedback to CP16/34 and CP17/3 and near-final rules*' (November 2017).
- 1.2** This is relevant to parties who wish to apply to the Prudential Regulation Authority (PRA) for, or have obtained, authorisation as an ISPV. You should read it in conjunction with the PRA Supervisory Statement, PS8/17 '*Authorisation and supervision of insurance special purpose vehicles*' published in November 2017¹, which addresses ISPVs.²
- 1.3** You should also read this statement in conjunction with the Risk Transformation Regulations 2017 (RTR).³

1 [SS8/17 'Authorisation and supervision of insurance special purpose vehicles' – www.bankofengland.co.uk/pru/Pages/publications/ss/2017/ss817.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/ss/2017/ss817.aspx)

2 Further information can be found on the PRA's website regarding ISPVs – www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles

3 www.legislation.gov.uk/uksi/2017/1212/contents/made



2 Authorisation of ISPVs and Protected Cell Companies (PCCs)

- 2.1** ISPVs are used to facilitate the transfer of risk from an insurer or reinsurer to the capital markets via the issuance of insurance-linked securities. ISPVs can take different forms. They can be created for the purpose of a single contract of risk transfer, or an ISPV may concurrently take on more than one contract of risk transfer from one or more cedants (referred to as a multi-arrangement ISPV (MISPV)). The concept of an MISPV is permitted within the Solvency II framework provided that it complies with the requirements of Articles 318-324 and 326-327 of the Commission Delegated Regulation (EU) 2015/35 (the Delegated Regulation) (and is capable of meeting the requirements of Article 325 of the Delegated Regulation).⁴
- 2.2** A single contract ISPV may use existing corporate structures. However, in accordance with the RTR, Her Majesty's Treasury has provided for a new corporate structure, the protected cell company (PCC), to facilitate MISPV business.
- 2.3** A PCC allows each contract for risk transfer to be established as a separate cell within the PCC, with each cell having its own pool of assets and liabilities which are segregated and in insolvency are remote from the other cells and the core (which administers the PCC). The cells and core do not have legal personality distinct from the PCC.

Authorisations process

- 2.4** ISPVs will be subject to dual regulation by the PRA and FCA. The PRA will lead the authorisation process but will require the FCA's consent before granting approval.
- 2.5** The FCA will assess each application against the Threshold Conditions for which it is responsible in relation to PRA-authorized persons, as set out in Part 1C of Schedule 6 to the Financial Services and Markets Act 2000 (FSMA). In giving our consent to an application, section 55B of FSMA requires us to ensure that the applicant will satisfy and continue to satisfy the Threshold Conditions. We consider that the application of the FCA's Threshold Conditions to ISPVs is consistent with the requirements on ISPVs in the Solvency II framework.
- 2.6** In summary, the Threshold Conditions⁵ are:
- **COND 2.3 Effective supervision**
It is a requirement that an entity must be capable of being effectively supervised by the FCA. This includes consideration of the nature of its business, complexity of products, how business is organised and whether membership of a group affects supervision.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:012:TOC>

⁵ For further detail see the Threshold Conditions (COND) Sourcebook of the FCA Handbook: www.handbook.fca.org.uk/handbook/COND/2/?view=chapter

- **COND 2.4 Appropriate resources**
The resources of a firm (for example, staff and systems) must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.
- **COND 2.5 Suitability**
The entity must be a fit and proper person, having regard to the FCA objectives in relation to adequate skills and experience on the Board, appropriate governance and internal controls over such areas as risk management and money laundering.
- **COND 2.7 Business Model**
The strategy of the firm for doing business must be suitable for a person carrying on the stated regulated activities. Such activities have to be conducted in the interest of consumers and maintain the integrity of the UK financial system.

Pre-application

- 2.7** The FCA will participate with the PRA in any pre-application discussions with firms to facilitate early, coordinated engagement and feedback in order to help applicants provide complete, good quality applications.

Applications for authorising an ISPV/MISPV

- 2.8** The PRA will be the lead regulator when authorising ISPVs and MISPVs but will carry out any assessment alongside the FCA with particular regard to each regulator's individual Threshold Conditions. Once satisfied that the firm meets the Threshold Conditions the FCA will give the PRA consent for its authorisation. The PRA will be responsible for communicating the overall decision to the firm.

Controlled functions

- 2.9** The FCA and PRA require individuals who perform certain governance functions, so are 'effectively running' the ISPV, to be approved prior to taking up a role (see also PRA Supervisory Statement 35/15 'Strengthening individual accountability in insurance' and the Solvency II EIOPA guidelines refer). Such roles are referred to as Controlled Functions (CF) by the FCA and the roles that arise from the Senior Insurance Manager Regime (SIMR) are referred to as Senior Insurance Management Functions (SIMFs) by the PRA. ISPVs will have three mandatory PRA SIMR roles and there are also FCA controlled functions that could apply depending on the type of business undertaken and size of the board.
- 2.10** For simple structures, where the business ceded to the ISPV is restricted to general insurance, firms should be able to organise their governance arrangements so they do not need to apply for approval for any additional FCA controlled functions. Life insurance 'transformation' ISPVs will need to seek approval for CF10 (Compliance).



- 2.11** Additional FCA controlled functions may be required in certain circumstances, for example Director (CF1) if the firm has directors who are not approved as PRA SIMFs. The systems and controls (CF28) and senior management (CF29) roles may also be relevant depending on how the firm proposes to allocate its governance responsibilities.
- 2.12** It should also be noted that the Approved Persons Regime will transition to the Senior Managers Regime (SMR). Further details can be found in the SMR CP that was published on 26 July 2017.⁶

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

- 2.13** Pursuant to the RTR, the FSMA Controller Regime will not apply to ISPVs. Part 12 of FSMA (control over authorised persons) does not apply in relation to a person who decides to acquire or increase control, or reduce or cease control, over an undertaking carrying out the activity specified in Article 13A of the RAO. However, the FCA will work with the PRA in assessing whether the ISPV complies with Article 323 of the Delegated Regulation.

Timelines

- 2.14** The FCA will work with the PRA to ensure that applications are assessed in a robust and timely manner. We believe that it will be possible to determine applications that represent a relatively straightforward proposal, are supported by good quality documentation and allow for an appropriate level of pre-application engagement within a 6-8 week period. However, we recommend that applicants engage with the PRA/FCA at an early stage as it may not be possible to meet this timeframe without pre-application discussions. Where applications are complex or innovative, applicants should allow for additional review time.

Decisions

- 2.15** The PRA will lead in assessing the application, but will require the consent of the FCA before granting authorisation.

⁶ See CP17/26 'Individual accountability – extending the Senior Managers and Certification Regime to insurers: www.fca.org.uk/publication/consultation/cp17-26.pdf

3 Registering of MISPVs as PCCs

- 3.1** Under the Companies Act 2006, most companies are required to apply directly to Companies House for registration and incorporation. However, the FCA will be responsible for registering PCCs in order to provide a more streamlined process. The FCA will also register new cells and record details of any cells that are dissolved. The FCA will work with Companies House to ensure that limited details are recorded on the Companies House website with full details on the FCA website; www.fca.org.uk.
- 3.2** The FCA's responsibilities for the registration of PCCs are set out in the RTR. In summary, once the FCA has decided that the company satisfies requirements for registration (which includes the receipt of notification from the PRA that, upon registration, it will authorise the PCC), the FCA will:
- inform the PRA
 - register the documents delivered to it
 - issue a certificate that the PCC is incorporated
- 3.3** Authorisation of the PCC as an MISPV by the PRA will be dependent on the FCA registering it, but in practice the FCA and PRA will coordinate the two processes.

Amending registration details

- 3.4** A PCC must give the FCA written notice of a proposed amendment to its instrument of incorporation. The RTR allow the FCA to rely on a statement signed by the solicitor or counsel for the PCC confirming that the proposed change does not affect the PCC's compliance with the regulations.

Cells

- 3.5** To create or dissolve cells, the information that the firms are required to provide to the FCA is set out in the RTR and includes:
- a. the names or numbers of the cells which have been created by the PCC;
 - b. for each cell, the date on which it was created;
 - c. if a PCC intends to dissolve a cell, the date on which the notification is sent



4 Supervision of ISPVs

4.1 ISPVs will be subject to ongoing supervision by the PRA and FCA and will need to comply with both regulators' Threshold Conditions on an ongoing basis. The FCA's supervisory approach will be proportionate and risk-based, in line with the risks of harm to consumers, market integrity and/or competition that the ISPV poses to the FCA's objectives. This is designed to support the FCA's judgement-based and pre-emptive approach. The model involves building the FCA's supervision around three clear pillars, each of which has a distinct purpose:

- **Pillar I. Proactive Firm Supervision (Firm Systematic Framework)**

The purpose of the Firm Systematic Framework is to assess whether the firm is being run, currently and prospectively, in a way that results in the fair treatment of customers, minimises risks to market integrity, and does not impede effective competition.

- **Pillar II. Event-driven work**

The purpose of event-driven supervision is to deal with issues that are emerging or have happened and are unforeseen in their nature.

- **Pillar III. Issues and products**

The purpose of issues and products work, or thematic supervision, is to allow the FCA to address its key conduct priorities at the issue and product level.

4.2 The supervision of ISPVs is likely to include aspects of each or all of the Pillars, dependent on the risk to the FCA's objectives arising from each individual firm.



Annex 1

Abbreviations used in this paper

CF	FCA controlled function
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
ISPV	Insurance Special Purpose Vehicle
MISPV	Multi-arrangement ISPV
PCC	Protected Cell Company
PRA	Prudential Regulation Authority
RAO	Regulated Activities Order
RTR	Risk Transformation Regulations 2017
SIMF	Senior Insurance Manager Function
SIMR	Senior Insurance Manager Regime
SMR	Senior Managers Regime
the Delegated Regulation	Commission Delegated Regulation (EU) 2015/35

We have developed this document in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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