



INSURANCE (GROUP SUPERVISION) REGULATIONS 2019

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Insurance Act 2008

INSURANCE (GROUP SUPERVISION) REGULATIONS 2019

Laid before Tynwald: 18 June 2019

Coming into Operation: 1 July 2019

The Isle of Man Financial Services Authority makes the following Regulations under sections 21H(1) and 50(1) of, and Schedule 7 to, the Insurance Act 2008, after carrying out the consultations required by section 50(3) of that Act.

PART 1 – INTRODUCTION

1 Title

These Regulations are the Insurance (Group Supervision) Regulations 2019.

2 Commencement

These Regulations come into operation on 1 July 2019.

3 Application

- (1) These Regulations apply to any designated insurer.
- (2) In these Regulations, any requirement expressed in terms of being applicable to an insurance group –
 - (a) is not to be construed as a direct requirement on any member of the insurance group other than the designated insurer in respect of the insurance group; and
 - (b) is a requirement for which the designated insurer in respect of the insurance group may be held accountable to the Authority in respect of its function as group supervisor.

4 Interpretation

- (1) In these Regulations –
“**the Act**” means the Insurance Act 2008;

- “**ancillary own funds**” has the meaning given in regulation 3 of the Valuation Regulations;
- “**approved supervisor**” has the meaning given in regulation 3 of the Valuation Regulations;
- “**best estimate**” has the meaning given in regulation 3 of the Valuation Regulations;
- “**close links**” means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;
- “**designated insurer**” has the meaning given in section 21A of the Act;
- “**consolidated group SCR**” has the meaning given in regulation 27;
- “**eligible own funds**”, in relation to the funds of a group undertaking, has the meaning given in regulation 3 of the Valuation Regulations;
- “**eligible group own funds**”, means —
- (a) in relation to method 1, the consolidated eligible group own funds referred to in regulation 31; and
 - (b) in relation to method 2, the aggregated eligible group own funds referred to in regulation 33;
- “**foreign insurer**” means an insurer in the insurance group who is not an authorised insurer;
- “**governing body**”, in relation to an insurance group or its group undertakings, means the board of directors (or equivalent) that is responsible for the corporate governance of the insurance group or of each group undertaking respectively;
- “**group-level**” refers to matters concerning the entirety of the insurance group;
- “**group undertaking**” in relation to an insurance group means an undertaking included as part of the insurance group for the purposes of group supervision;
- “**group SCR**” means the SCR determined at the head of the insurance group in accordance with regulation 16;
- “**head of the insurance group**”, in relation to an insurance group means the group undertaking which has the highest level of control over the other group undertakings;
- “**insurance group**” means an insurance group in respect of which the Authority has determined under section 21C(1) of the Act that it is appropriate that it is the group supervisor;
- “**intra-group transaction**” means any transaction by which a group undertaking relies, either directly or indirectly, on —

- (a) another group undertaking; or
- (b) any natural or legal person linked to a group undertaking by close links; and

for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

“**long-term insurance business**” has the meaning given in regulation 4 of the Insurance Regulations 2018¹;

“**MCR**”, means Minimum Capital Requirement as defined in the Valuation Regulations;

“**marked-to-model**” has the meaning given in regulation 3 of the Valuation Regulations;

“**method 1**” means the method for calculating the group SCR and eligible group own funds described in regulation 25;

“**method 2**” means the method for calculating the group SCR and eligible group own funds described in regulation 32;

“**own funds**” has the meaning given in regulation 3 of the Valuation Regulations;

“**own fund item**” has the meaning given in regulation 3 of the Valuation Regulations;

“**reciprocal financing**” has the meaning given in regulation 42;

“**restricted own funds**” has the meaning given in regulation 3 of the Valuation Regulations;

“**ring-fenced funds**” has the meaning in regulation 3 of the Valuation Regulations;

“**risk margin**” has the meaning in regulation 3 of the Valuation Regulations;

“**risk profile**”, in relation to an insurer or an insurance group, has the meaning given in regulation 3 of the Valuation Regulations in relation to an insurer;

“**SCR**” means Solvency Capital Requirement as defined in the Valuation Regulations;

“**solvency deficit**” means the amount (if any) by which a group undertaking’s eligible own funds fall short of its SCR;

“**special purpose vehicle**” has the meaning in regulation 3 of the Valuation Regulations;

“**tier**” has the same meaning as in Part 5 of the Valuation Regulations;

“**Valuation Regulations**” means the Insurance (Long-Term Business Valuation and Solvency) Regulations 2018².

¹ SD 2018/0192

² SD 2018/0193

PART 2 – GENERAL REQUIREMENTS

5 **Directors, chief executives and principal control officers of the head of an insurance group**

- (1) A designated insurer must take reasonable steps to ensure that those persons responsible for –
 - (a) the direction and management of the insurance group; and
 - (b) the internal control functions at group level,are fit and proper.
- (2) The designated insurer must give written notice to the Authority of the appointment of a person to any of the following roles within 10 business days of the appointment—
 - (a) the directors and the chief executive of the head of the insurance group;
 - (b) the directors of insurers which are members of the insurance group and which carry on insurance business in accordance with the laws of a country outside the Island; and
 - (c) any principal control officers at group-level.
- (3) The written notice to be given under paragraph (2) must contain such particulars as may be determined by the Authority.

6 **Auditor of head of an insurance group**

- (1) The auditor of the head of the insurance group must be suitable for that role.
- (2) A designated insurer must give written notice to the Authority in respect of the auditor of the head of the insurance group.

7 **Policies and procedures for fair treatment of policyholders**

- (1) A designated insurer must take reasonable steps to satisfy itself that –
 - (a) policies and procedures at group-level are established and implemented for the fair treatment of policyholders as an integral part of the insurance group’s business and culture; and
 - (b) the insurance group’s policies and procedures at group-level for the fair treatment of policyholders are set out in writing and are provided to all relevant staff.
- (2) Those policies and procedures must include a consideration of how the insurance group –
 - (a) develops and markets its products in a way that pays due regard to the interests of its policyholders;

- (b) ensures that its policyholders are provided with clear information before, during and after the point of sale;
 - (c) only permits distribution methods that are appropriate to its products and its policyholders' needs;
 - (d) deals with its policyholders' complaints and disputes in a fair and transparent manner;
 - (e) manages the reasonable expectations of its policyholders;
 - (f) monitors its staff and management to ensure that they are aware of their obligations in relation to the fair treatment of policyholders, including through regular training; and
 - (g) ensures that any performance and reward strategies for its staff and management are aligned with the principles of the fair treatment of policyholders and promote the prevention of unfair policyholder outcomes.
- (3) The design, implementation, maintenance and monitoring of adherence to the policies and procedures in (1) should be subject to the oversight of the board and senior management of the designated insurer in conjunction with the head of the insurance group and other insurers in the insurance group as appropriate.
- (4) A designated insurer must take reasonable steps to satisfy itself that those policies and procedures are regularly reviewed and updated if necessary to ensure that they remain valid and up to date.

8 Corporate governance

- (1) A designated insurer must take reasonable steps to satisfy itself that an effective corporate governance framework is established, implemented and maintained in respect of the insurance group which ensures that the insurance group and its group undertakings –
- (a) are soundly and prudently managed (which includes being soundly and prudently overseen by their respective governing bodies); and
 - (b) adequately recognise and protect the interests of their policyholders.
- (2) A designated insurer must take all reasonable steps to satisfy itself that adequate, appropriate and effective measures are established, implemented and maintained to meet the requirements of paragraph (1) in a way that is at least proportionate to the nature, scale and complexity of the insurance group, its activities and the risks to which it is or may be exposed.
- (3) The organisational structure of an insurance group must not unreasonably inhibit –
- (a) the insurance group from complying with these Regulations; or

- (b) the Authority in carrying out its functions as group supervisor under section 21G of the Act.

9 Reporting

- (1) A designated insurer must provide to the Authority such information as the Authority may require for the purpose of carrying out its functions as group supervisor of the insurance group.
- (2) Without limiting the generality of paragraph (1), a designated insurer must provide the Authority with—
 - (a) details of the insurance group’s structure, showing the legal structure, where group undertakings are located, the principal activity of each group undertaking, their regulatory status and the percentage of ownership of each group undertaking;
 - (b) information relating to the key relationships between group undertakings, including outsourcing arrangements and other dependencies;
 - (c) details of any material financial and non-financial intra-group transactions;
 - (d) details of the insurance group’s organisational structure, showing the names of the directors of group undertakings and those carrying out group functions as well as details of reporting lines;
 - (e) details of the insurance group’s approach to governance, including the matters specified in paragraph (3);
 - (f) details of significant risk concentrations across the insurance group;
 - (g) consolidated financial statements for the head of the insurance group as required by relevant companies legislation; and
 - (h) the solvency position of the insurance group.
- (3) The matters referred to in paragraph (2)(e) are —
 - (a) the degree of authority and autonomy at group-level;
 - (b) the structure of the significant control functions (including risk management, compliance, internal audit and, if applicable, actuarial) at the group-level, their relationships to each other and to the insurance group;
 - (c) the allocation of significant corporate governance responsibilities and accountabilities to persons and bodies, as applicable, at the group-level, including—
 - (i) setting, and ultimately approving, strategy and giving direction; and

- (ii) setting, and ultimately approving, the significant policies that set and oversee the implementation of that strategy and direction.
- (4) For the purposes of paragraph (2)(f) a risk is “significant” if exposure to it has a loss potential large enough to threaten the solvency or financial position of an insurer who is a group undertaking or the insurance group itself.
- (5) The information referred to in paragraph (2) must be provided to the Authority annually at the same time as the designated insurer’s annual accounts are submitted.
- (6) Any significant changes to the information referred to in paragraph (2) must be notified to the Authority.

10 Register of insurance groups

The register of insurance groups required under section 21C(8) of the Act must contain the name of the insurance group and the name of the designated insurer of that insurance group.

PART 3 – SOLVENCY REQUIREMENTS

General solvency requirements

11 Designated insurer to ensure sufficient eligible group own funds

The designated insurer must ensure that the insurance group holds eligible group own funds which are always at least equal to the group SCR.

12 Solvency position to be calculated annually

- (1) The designated insurer must calculate the group SCR at least annually and compare against the eligible group own funds.
- (2) The designated insurer must submit the result of paragraph (1) to the Authority.

13 Solvency position to be monitored on ongoing basis

The designated insurer must monitor the movement in group SCR against the eligible group own funds or the solvency position of the insurance group on an ongoing basis.

14 Deteriorating solvency position

- (1) The designated insurer must –

- (a) have procedures in place to identify deteriorating financial conditions affecting one or more group undertakings; and
 - (b) comply with the requirements of the Act when the deterioration occurs.
- (2) For clarity –
- (a) the requirements of the Act regarding an authorised insurer’s duty to inform the Authority in relation to risks affecting its solvency position; and
 - (b) the consequences under the Act of an authorised insurer not complying with its capital requirements within the meaning of regulation 3 of the Valuation Regulations,
- apply equally to a designated insurer in respect of its insurance group.

15 Group SCR and eligible group own funds to be recalculated in the following circumstances

- (1) The designated insurer must recalculate the group SCR and eligible group own funds without delay and report the results to the Authority –
 - (a) if the risk profile of the insurance group deviates significantly from the assumptions underlying the group SCR; or
 - (b) at the request of the Authority.

16 Method for calculating the group SCR and eligible group own funds

- (1) The designated insurer must calculate the group SCR and eligible group own funds using method 1. This is subject to paragraph (2).
- (2) At the request of the designated insurer, the Authority may, instead of method 1, approve the use of method 2 by the designated insurer when calculating the group SCR and group eligible own funds.
- (3) The approval will relate to a specific group undertaking or subset of group undertakings.
- (4) In order for the Authority to consider approving the use of method 2, the designated insurer must provide evidence as to whether –
 - (a) the amount and quality of information available in relation to a group undertaking would not be sufficient for it to use method 1;
 - (b) the use of method 1 in relation to a group undertaking would be overly burdensome;
 - (c) the nature, scale and complexity of the risks of the insurance group are such that the using method 2 in relation to that group undertaking, or subset of group undertakings, would not materially affect the solvency position of the insurance group;

- (d) any intra-group transactions are not significant, in terms of volume and value of the transaction; and
 - (e) if the group undertaking is a foreign insurer, that foreign insurer is supervised by an approved supervisor other than the Authority.
- (5) The method, or combination of methods, chosen must be applied consistently over time.
- (6) The designated insurer must revert to using method 1 if the use of method 2 for a group undertaking is no longer justified considering the matters referred to in paragraph (4).

17 Inclusion of proportional share

- (1) When determining the group SCR and eligible group own funds, the designated insurer must take account of the proportional shares held by the head of the insurance group in each of the group undertakings.
- (2) Paragraphs (3) and (4) specify what the proportional share comprises for the purposes of paragraph (1).
- (3) If method 1 is used, it comprises —
- (a) unless paragraph (6) applies, 100% of the shares held by the head of the insurance group in a group undertaking, when including data referred to in regulation 26(1)(a) and (b);
 - (b) the percentages used for the establishment of the consolidated accounts, when including data referred to in regulation 26(1)(c); and
 - (c) the proportion of the group undertaking's subscribed capital that is held directly or indirectly by the head of the insurance group, when including data referred to in regulation 26(1)(d).
- (4) If method 2 is used, it comprises the proportion of the group undertaking's subscribed capital that is held (directly or indirectly) by the head of the insurance group.
- (5) Where paragraph (3)(c) or (4) applies, if a group undertaking does not have sufficient eligible own funds to meet its SCR, the total solvency deficit of the group undertaking must be taken into account regardless of the proportional share determined for that group undertaking. This is subject to paragraph (6).
- (6) If the responsibility of the head of the insurance group in a group undertaking is strictly limited to its share of that group undertaking's capital, the solvency deficit of the group undertaking can be taken into account on a proportional basis, subject to the agreement of the Authority.
- (7) If paragraph (6) applies the designated insurer must evidence that —
- (a) no profit and loss transfer agreement and no guarantees, net worth maintenance agreements or other agreements of the head of the

- insurance group or any other group undertaking providing financial support are in place;
- (b) the investment by the head of the insurance group in the group undertaking is not considered as a strategic investment for the head of the insurance group;
 - (c) the head of the insurance group does not benefit from any advantage from its participation in the group undertaking, if such an advantage could take the form of intragroup transactions such as loans, reinsurance agreements or service agreements;
 - (d) the group undertaking is not a core component of the insurance group's business model; and
 - (e) a written agreement between the head of the insurance group and the group undertaking explicitly limits the support of the head of the insurance group in case of a solvency deficit to its share in the capital of that group undertaking.
- (8) In determining whether or not the group undertaking is a core component of the insurance group's business model for the purposes of paragraph (7)(d), the following should be taken into account in particular –
- (a) product offering;
 - (b) client base;
 - (c) underwriting;
 - (d) distribution; and
 - (e) investment strategy and management.
- (9) For the purposes of paragraph (7)(d), a group undertaking is a core component of the insurance group's business model if –
- (a) it is operating under the same name or brand; or
 - (b) there are interlocking responsibilities at the level of the insurance group's senior management.
- (10) The designated insurer must determine an appropriate proportional share, and obtain approval from the Authority for use of that proportional share, if –
- (a) there are no capital ties between some of the group undertakings; and
 - (b) the participation results from exertion of a dominant influence or control.

Determination of the SCR and eligible own funds for specific types of group undertakings

18 Authorised insurers

If a group undertaking is an authorised insurer, the designated insurer must calculate the SCR and eligible own funds for that group undertaking in accordance with Parts 3 and 5 the Valuation Regulations respectively.

19 Foreign insurers

- (1) If a group undertaking is a foreign insurer —
- (a) that foreign insurer must, only for the purposes of the calculations in regulations 33 and 34, be treated as an authorised insurer; and
 - (b) that group undertaking's SCR and eligible own funds must be calculated by the designated insurer in accordance with Parts 3 and 5 of the Valuation Regulations respectively.

This is subject to paragraph (2).

- (2) If the foreign insurer is supervised by an approved supervisor other than the Authority, the calculations in regulations 33 and 34 can take into account, as regards that foreign insurer —
- (a) any requirement equivalent to the SCR;
 - (b) the rules as to eligible own funds;
 - (c) the rules as to the calculation of the best estimate and the risk margin; and
 - (d) the rules as to the treatment of items such as ring-fenced funds and marked-to-model portfolios,
- as laid down by the approved supervisor.

20 Holding companies

- (1) If a group undertaking is a holding company —
- (a) that holding company must, only for the purposes of these Regulations, be treated as an authorised insurer; and
 - (b) that group undertaking's SCR and eligible own funds must be calculated by the designated insurer in accordance with Parts 3 and 5 of the Valuation Regulations respectively.
- (2) If a group undertaking is related to another group undertaking through one or more intermediate holding companies, the situation of each intermediate holding company must be taken into account when determining the group SCR and eligible group own funds.

21 Credit, investment and financial institutions

- (1) If a group undertaking is a credit institution, investment firm or financial institution that is supervised by the Authority or another approved supervisor, the designated insurer must, only for the purposes of these Regulations, determine a capital requirement for that group undertaking in accordance with —
 - (a) the Financial Services Act 2008 for activities regulated under that Act; or
 - (b) any analogous requirements under legislation which has effect in the jurisdiction of the other approved supervisor.
- (2) With the approval of the Authority, the designated insurer may exclude a group undertaking of this type from the calculation of the group SCR and eligible group own funds.
- (3) Should the approval in paragraph (2) be provided, the designated insurer must deduct the value of the group undertaking in the head of the insurance group from the eligible group own funds.

22 Non-regulated entities carrying out financial activities

- (1) If a group undertaking is carrying out financial activities and is not regulated by the Authority or any other supervisor —
 - (a) that group undertaking must, only for the purposes of these regulations, be treated as an authorised undertaking carrying out those regulated activities in the Isle of Man; and
 - (b) that group undertaking's SCR and eligible own funds must be calculated in accordance with the Financial Services Act 2008 for regulated activities of that type.
- (2) With the approval of the Authority, the designated insurer may exclude a group undertaking of this type from the calculation of the group SCR and eligible group own funds.
- (3) Should the approval in paragraph (2) be provided, the designated insurer must deduct the value of the group undertaking in the head of the insurance group from the eligible group own funds.

23 Special Purpose Vehicles

A special purpose vehicle to which a group undertaking has transferred risk must be excluded from the calculation of the solvency position of the insurance group if —

- (a) it complies with the requirements of the Insurance (Special Purpose Vehicles) Regulations 2015³; and

³ SD 2015/0100

- (b) it is regulated by an approved supervisor.

24 Non-availability of necessary information

- (1) For a specific group undertaking, where the information necessary for calculating the group SCR or eligible group own funds concerning that group undertaking is not available –
 - (a) the value of the group undertaking in the head of the insurance group must be deducted from the eligible group own funds; and
 - (b) the unrealised gains connected with that participation must not be recognised as eligible group own funds.
- (2) The designated insurer must notify the Authority if a group undertaking is excluded from the calculation of the solvency position of the insurance group due to non-availability of necessary information.

Method 1 – Accounting consolidation-based method

25 Method 1 – Accounting consolidation-based method

- (1) The calculation of the group SCR and eligible group own funds must be carried out on the basis of a consolidated regulatory balance sheet.
- (2) The consolidated regulatory balance sheet must be determined at the head of the insurance group under Part 2 of the Valuation Regulations.
- (3) For the purpose of paragraph (2) only, where the head of the insurance group is not an authorised insurer, it must be treated as if it were an authorised insurer for the purpose of determining a consolidated regulatory balance sheet.
- (4) The group SCR must be equal to the consolidated group SCR, as determined under regulation 27.
- (5) The eligible group own funds must be equal to the consolidated eligible group own funds as determined under regulation 31.

26 Determination of a consolidated regulatory balance sheet

- (1) The consolidated regulatory balance sheet must be determined according to the proportional share requirements in regulation 17(1), including –
 - (a) full consolidation of data of all group undertakings that are authorised insurers, foreign insurers and holding companies;
 - (b) full consolidation of data of special purpose vehicles to which a group undertaking has transferred risk and which are not excluded under regulation 23;
 - (c) the proportional share of data of group undertakings where the head of the insurance group’s responsibility is limited to the share of the group undertaking’s capital it holds;

- (d) the proportional share of own funds of group undertakings which are credit institutions, investment firms and financial institutions, and non-regulated group undertakings carrying out financial activities; and
- (e) data of all group undertakings other than those referred to in subparagraphs (a) to (d) above.

27 Calculation of consolidated group SCR

- (1) The group SCR based on consolidated data (“**consolidated group SCR**” or “**SCR_G**”) is —

$$SCR_G = A + B + C$$

where —

- (a) “A” is the group SCR based on consolidated data for the group undertakings referred to in 26(1)(a), (b) and (c), calculated under Part 3 of the Valuation Regulations;
 - (b) “B” is the proportional share of the SCR for each group undertaking referred to in regulation 26(1)(d); and
 - (c) “C” for group undertakings referred to in regulation 26(1)(e), is an amount determined under regulations 14, 65 and 76 of the Valuation Regulations.
- (2) For the purposes of paragraph (1)(b), —
- (a) for credit institutions, investment firms and financial institutions, the SCR is calculated according to regulation 21; and
 - (b) for non-regulated group undertakings carrying out financial activities, the SCR is calculated according to regulation 22.
- (3) The consolidated group SCR, must be calculated in the local currency of the designated insurer (as defined in regulation 67 of the Valuation Regulations).
- (4) The consolidated group SCR must take into account the global diversification of risks that exist across all group undertakings in order to reflect properly the risk exposures of the insurance group.
- (5) The consolidated group SCR must at least be equal to —

$$SCR_G \geq M + N$$

where —

- (a) “M” the MCR of the head of the insurance group determined under part 4 of the Valuation Regulations; and
- (b) “N” the proportional share of the MCR of each group undertaking determined under part 4 of the Valuation Regulations.

- (6) If a group undertaking is included in the consolidated data pursuant to regulation 26(1)(a) to (c), its contribution to the consolidated group SCR must reflect diversification benefits.

- (7) The diversification benefit attributable to the group undertaking is —

$$Div = P * SCR_G / SCR_{pre-div}$$

where —

- (a) “P” is the proportional share of the SCR of the group undertaking;
- (b) “ SCR_G ” is the consolidated group SCR under paragraph (1); and
- (c) “ $SCR_{pre-div}$ ” the consolidated group SCR before diversification is applied under Part 3 of the Valuation Regulations.
- (8) If —
- (a) a capital add-on has been imposed on a group undertaking in accordance with regulation 52(1)(b) of the Valuation Regulations; or
- (b) the Authority deems the deviation of the risk profile of the insurance group from the assumptions underlying the group SCR to be significant,

the Authority may impose a capital add-on on the consolidated group SCR.

28 Best estimate

- (1) The consolidated best estimate is the sum of —
- (a) the best estimate of the head of the insurance group calculated under Part 2 of the Valuation Regulations; and
- (b) the proportional share of the best estimate, calculated under Part 2 of the Valuation Regulations, of the group undertakings referred to in 26(1)(a), (b) and (c).
- (2) The best estimate must be adjusted for any intra-group transactions.
- (3) In relation to intra-group reinsurance contracts, the following adjustments must be made —
- (a) the best estimate of the group undertaking that accepts risks must not include the cash flows arising from the obligations of the intra-group reinsurance contracts; and
- (b) the group undertaking that cedes the risk must not recognise the amounts recoverable from the intra-group reinsurance contracts.

29 Consolidated risk margin

- (1) The consolidated risk margin is the sum of —
- (a) the risk margin of the head of the insurance group; and

- (b) the proportional share of the risk margin of other group undertakings.
- (2) The consolidated risk margin must be calculated assuming that —
 - (a) the transfer of the group’s insurance obligations to a reference insurer, as defined in regulation 37 of the Valuation Regulations, is carried out separately for each group undertaking; and
 - (b) the risk margin does not allow for diversification of risks between group undertakings.

30 Ring fenced funds and marked-to-model portfolios

- (1) The designated insurer must apply the provisions of Part 5 of the Valuation Regulations relating to ring-fenced funds and marked-to-model portfolios to all group undertakings.
- (2) If a group undertaking has a material ring-fenced fund or marked-to-model portfolio the consolidated group SCR is the sum of —

$$SCR_G = SCR_{RF} + SCR_{Res}$$

where —

- (a) “ SCR_{RF} ” is the sum of the SCRs for each material ring-fenced fund and each marked-to-model portfolio; and
- (b) “ SCR_{Res} ” is the SCR for the remaining consolidated data.
- (3) For the purposes of calculating the SCR under paragraph (2), the assets and liabilities of the ring-fenced fund are to be gross of intra-group transactions.
- (4) For the purposes of calculating the group SCR under paragraph (2)(b)—
 - (a) the assets and liabilities of all material ring-fenced funds are to be excluded; and
 - (b) the assets and liabilities of all non-material ring-fenced funds are to be included.
- (5) For the purposes of paragraph (2)(b), intra-group transactions within the remaining consolidated data should be —
 - (a) included if they are between the remaining consolidated data and the material ring-fenced funds; or
 - (b) otherwise excluded.
- (6) All intra-group transactions between material ring-fenced funds and the remaining consolidated data should be eliminated when determining eligible group own funds.
- (7) For each material ring-fenced fund and marked-to-model portfolio identified within the consolidated data, the designated insurer must calculate the restricted own fund items using the same assets and liabilities

used to calculate its SCR under the preceding paragraphs of this regulation.

- (8) The total restricted own funds within the ring-fenced fund or marked to model portfolio to be deducted from the consolidated group reconciliation reserve, as defined in Part 5 of the Valuation regulations, is the sum of all material restricted own funds in the scope of consolidated data.

31 Calculation of consolidated eligible group own funds

Consolidated eligible group own funds must be determined by the designated insurer on the basis of consolidated data and under regulations 38 to 44.

Method 2 – deduction and aggregation method

32 Method 2 – deduction and aggregation method

- (1) The calculation of the group SCR and eligible group own funds must be carried out on the basis of aggregated eligible group own funds and an aggregated group SCR.
- (2) The group SCR must be equal to the aggregated group SCR, as determined under regulation 34.
- (3) The eligible group own funds must be equal to the aggregated eligible group own funds as determined under regulation 33.
- (4) The items referred to in regulations 33 and 34 must include the corresponding proportional share of the eligible own funds and SCR of the group undertaking or undertakings, for whom method 2 is being used.

33 Calculation of aggregated eligible group own funds

- (1) The aggregated eligible group own funds is —

$$A = B + C - D$$

where —

- (a) “A” is the aggregated eligible group own funds;
- (b) “B” is the consolidated eligible group own funds determined excluding the group undertakings for whom method 2 is being used;
- (c) “C” is the proportional share of the eligible own funds for the group undertakings for whom method 2 is being used; and
- (d) “D” is the value in the head of the insurance group of the group undertakings for whom method 2 is being used.
- (2) If the head of the insurance group’s responsibility is limited to a share of the group undertaking’s capital it holds, D must reflect the proportional share of the value.

- (3) The aggregated eligible group own funds must be adjusted to eliminate the impact of an intra-group transaction if its elimination would affect the best estimates of the group undertakings for whom method 2 is being used, such that the amount referred to in paragraph (4) would be different if it were not eliminated.
- (4) That amount is the sum of —
 - (a) the consolidated best estimate excluding the group undertaking for whom method 2 is being used; and
 - (b) the proportional share of the best estimate of each group undertaking for whom method 2 is being used.

34 Calculation of aggregated group SCR

- (1) The aggregated group SCR is the sum of —
 - (a) the consolidated group SCR determined under regulation 27 excluding the group undertaking for whom method 2 is being used; and
 - (b) the proportional share of the SCR of the group undertakings for whom method 2 is being used.

This is subject to paragraph (3).

- (2) The SCR in paragraph (1)(b) should be determined for each group undertaking for whom method 2 is being used under regulations 18, 20, 21, 22 or 23 depending on the type of group undertaking they are.
- (3) If a capital add-on due to a risk-profile deviation has been imposed on a group undertaking for whom method 2 is being used, the proportional share of that capital add-on must be included in the aggregated group SCR.
- (4) Where a capital add-on due to the same risk-profile deviation has also been imposed at group level, the designated insurer must avoid double counting the capital add-on.

35 Minimum group SCR if combination of method 1 and 2 used

If the Authority has approved the use of a combination of methods 1 and 2, the consolidated group SCR calculated for the part of the group using method 1 must be at least equal to the amount determined in regulation 27(5).

Group capital add-on

36 Imposition of group capital add-on

- (1) The Authority may, in exceptional circumstances, adjust the group SCR by imposing a group capital add-on, if the Authority has concluded

during the supervisory review process that the risk profile of the group deviates significantly from the assumptions underlying the group SCR.

- (2) The imposition of a capital add-on by the Authority will be on an exceptional basis and used only as a measure of last resort, when other supervisory measures are ineffective or inappropriate.
- (3) The term exceptional should be understood in the context of the specific situation of each group rather than in relation to the number of capital add-ons imposed in the Island's insurance market.
- (4) The Authority will communicate its decision to impose a capital add-on in writing to the designated insurer, stating its reasons.
- (5) The Authority may vary or revoke a capital add-on under this regulation.
- (6) The capital add-on will have a numerically positive value and the designated insurer must provide the Authority with all the information it requires to determine such an amount.

37 Effect of a capital add-on at insurance group level

- (1) If, under regulation 36, the Authority has imposed a capital add-on at insurance group level for reasons which are appropriate for the designated insurer to remedy, the designated insurer must take all reasonable steps to remedy the circumstances that led to the capital add-on requirement within a timeframe agreed with the Authority.
- (2) At a minimum, the capital add-on will remain in place for as long as the circumstances under which it was imposed are not remedied to the satisfaction of the Authority.
- (3) If a capital add-on is due to the risk profile of the group being significantly different to that underlying the group SCR, the add-on may remain in place over consecutive years.

Group Own funds

38 Eligible own funds of a group undertaking

- (1) Whether an own fund item of a group undertaking is to be —
 - (a) classed as an eligible own fund item; and
 - (b) classified as a relevant tier,must be determined under regulations 18, 20, 21, 22 or 23 depending on the type of group undertaking they are.

39 Availability of eligible own funds of group undertakings at insurance group level

- (1) The designated insurer must determine whether eligible own funds of a group undertaking are available group own funds and can therefore be assessed to be eligible to meet the group SCR.
- (2) The assessment in paragraph (1) should be documented and available to the Authority on request.
- (3) The Authority may require the designated insurer to deem an own-fund item to be unavailable at insurance group level, if the Authority has concluded this through the supervisory review process.
- (4) In order to comply with paragraph (1) the designated insurer must consider whether the own fund items—
 - (a) are considered to be unavailable in regulation 40;
 - (b) do not constitute double use of own fund items between group undertakings under regulation 41;
 - (c) are not classed as reciprocal financing under regulation 42;
 - (d) do not meet one of the requirements in paragraph (5); and
 - (e) are subject to any legal or regulatory requirements that restrict the ability of that item to absorb losses wherever they arise in the group.
- (5) The designated insurer must also consider whether —
 - (a) there are legal or regulatory requirements that restrict the transferability of assets to another group undertaking on a going-concern basis;
 - (b) making those own funds available at insurance group level would not be possible within a maximum of 9 months;
 - (c) where method 2 is used for a group undertaking, the own fund item does not satisfy the requirements set out in regulations 136, 138 and 141 of the Valuation Regulations; and
 - (d) there are any costs to the head of the insurance group, or to any group undertaking, of making such own funds available for the insurance group.
- (6) If the eligible own funds of a group undertaking meet one of the requirements in paragraphs (4) or (5), they should either —
 - (a) not be considered to be available group own funds; or
 - (b) be taken into account only in so far as regulations 40 to 42 allow.
- (7) If the eligible own funds of a group undertaking do not meet one of the requirements in paragraphs (4) or (5) the designated insurer can assume these eligible own funds are available group own funds.

40 Eligible own funds of a group undertaking that are not available group own funds

- (1) The following eligible own funds of a group undertaking are not available group own funds –
 - (a) ancillary own funds;
 - (b) preference shares, subordinated mutual member accounts and subordinated liabilities;
 - (c) an amount equal to the value of net deferred tax assets;
 - (d) any minority interest in a group undertaking exceeding the contribution of that group undertaking to the group SCR; and
 - (e) any restricted own fund item in a ring fenced fund.

This is subject to paragraph (2).

- (2) If the designated insurer can demonstrate to the satisfaction of the Authority that the assumptions referred to in paragraph (1) for one of the items is inappropriate in the specific circumstances of the group, the designated insurer may deem that item to be an available group own fund (for example, if the Authority has approved an ancillary own fund under regulation 147 of the Valuation Regulations).

41 Adjustments due to double use of eligible own funds between group undertakings

- (1) The double use of eligible own funds among the different group undertakings in determining the available group own funds is not allowed.
- (2) For that purpose when determining available group own funds, if neither method 1 nor method 2 provide for it, the designated insurer must exclude the value of –
 - (a) any asset of the head of the insurance group which has financed an eligible own fund item of a group undertaking;
 - (b) any asset of a group undertaking which has financed an eligible own fund item of the head of the group;
 - (c) any asset of a group undertaking which has financed an eligible own fund item of any other group undertaking of the head of the insurance group.
- (3) The following may be considered available group own funds only in so far as they are considered eligible for covering the SCR of the group undertaking concerned –
 - (a) any subscribed, but not paid-up, capital of a group undertaking; and
 - (b) surplus funds meeting the requirements of regulation 18 of the Valuation Regulations, arising in a group undertaking.

This paragraph is without prejudice to paragraphs (2) and (4).

- (4) Further to paragraphs (2) and (3), the following must not be considered to be available group own funds only in so far as they are considered eligible for covering the SCR of the group undertaking concerned –
- (a) any subscribed, but not paid-up, capital, which represents a potential obligation on the head of the insurance group;
 - (b) any subscribed, but not paid-up, capital of the head of the insurance group which represents a potential obligation on the part of a group undertaking; and
 - (c) any subscribed, but not paid-up, capital of a group undertaking which represents a potential obligation on the part of another group undertaking.

This paragraph is without prejudice to paragraph (2).

- (5) The sum of the eligible own funds of the group undertaking included under paragraphs (3) and (5) must not exceed the SCR of that group undertaking.

42 Adjustments due to reciprocal financing between group undertakings

- (1) Eligible own funds of group undertakings arising out of reciprocal financing between –
- (a) the head of the insurance group and a group undertaking; or
 - (b) between two or more group undertakings,
- are not considered to be available group own funds.
- (2) Reciprocal financing exists at least if a group undertaking (A) hold shares in, or makes loans to, another group undertaking (B) which directly or indirectly holds eligible own funds of (A).

43 Determining eligible group own funds

- (1) Once the designated insurer has determined the available group own funds, it must determine the degree to which each available own fund item is eligible to meet the group SCR under regulation 133 of the Valuation Regulations and is therefore an eligible group own fund item.
- (2) If a group undertaking has classified an own fund item as Tier 1, 2 or 3, the item must be classified in the same tier at group level if the item –
- (a) at group level satisfies the requirements of regulations 135, 137 and 140 respectively of the Valuation Regulations;
 - (b) is free from encumbrances; and
 - (c) is not connected with any other transaction that, when considered with the item, could result in it not satisfying the requirements of regulation 133 of the Valuation Regulations.

- (3) For the purposes of paragraph (2), own fund items which are issued by a group undertaking that is a holding company to a group undertaking that is an authorised or foreign insurer, must not be considered to be free from encumbrances unless the claims relating to those items rank after the claims of all policyholders and beneficiaries of that insurer.
- (4) Despite paragraph (2), if a group undertaking has classified an own fund item as Tier 2 which would be classified as Tier 1 under regulation 138(1) of the Valuation Regulations, that classification must not prohibit the classification of the item as Tier 1 at group level, provided that the limit in regulation 133(8) of the Valuation Regulations is not exceeded.

44 Group reconciliation reserve

- (1) The designated insurer must determine the group reconciliation reserve under regulation 143 of the Valuation Regulations.
- (2) In particular, the designated insurer must take into account —
 - (a) the value of own shares held by the head of the insurance group and other group undertakings; and
 - (b) the restricted own fund items that exceed the SCR in the case of ring-fenced funds and marked-to-model portfolios at group level.

45 Appropriate distribution of own funds

- (1) A designated insurer must ensure that eligible own funds are —
 - (a) appropriately distributed within the insurance group; and
 - (b) available to protect policyholders and beneficiaries if needed.
- (2) In applying paragraph (1) the designated insurer must satisfy itself that an authorised insurer within the insurance group holds eligible own funds which are always at least equal to its SCR determined under the Valuation Regulations.

46 Notification of issuance of own fund items by a group undertaking

- (1) The designated insurer must notify the Authority in writing of the intention of any group undertaking that is not authorised by the Authority, to issue an item which it intends to include within the eligible group own funds as soon as it becomes aware of the intention of the issuing group undertaking.
- (2) When giving notice under paragraph (1) the designated insurer must —
 - (a) provide details of the amount of basic own funds to be raised through the intended issue and whether the item is intended to be issued to external investors or within the insurance group;
 - (b) identify the tier the own fund item is expected to fall within; and

- (c) include confirmation that the item complies with the rules set out in this section.
- (3) The designated insurer must provide further written notification as soon as the group undertaking proposes any change to the intended issue date, amount of issue, type of investors, classification or any other feature previously notified.
- (4) If a group undertaking proposes to establish a debt securities program for the issue of an item which the designated insurer intends to include within the eligible group own funds, the designated insurer must —
 - (a) notify the Authority of the establishment of the program; and
 - (b) provide the information referred to in paragraph (2), as soon as it becomes aware of the proposed establishment.
- (5) If paragraph (4) applies, the Authority must be notified of any changes in accordance with paragraph (3).
- (6) The items of basic own funds to which paragraph (1) does not apply are —
 - (a) ordinary shares issued by a group undertaking which are classified as Tier 1 or Tier 2 and are the same as ordinary shares previously issued by that group undertaking;
 - (b) debt instruments issued from a debt securities program established by a group undertaking, provided that program was notified to the Authority prior to its first drawdown; and
 - (c) any item which is not materially different in terms of its characteristics and eligibility for inclusion in a particular tier to items previously issued by the group undertaking and included in the eligible group own funds.
- (7) The designated insurer must notify the Authority, no later than the date of issue, of the intention of a group undertaking to issue an item listed in paragraph (4) which it intends to include within the basic own funds forming the own funds eligible for the group SCR.
- (8) When giving notice under paragraph (5) the designated insurer must —
 - (a) provide the information set out in paragraph (2); and
 - (b) confirm that the terms of the item have not changed since the previous issue of that type of item of basic own funds by that group undertaking.

MADE 23 MAY 2019

KAREN BADGEROW

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LILLIAN BOYLE

Member of the Isle of Man Financial Services Authority

EXPLANATORY NOTE***(This note is not part of the Regulations)***

These Regulations contain requirements for insurance groups where the Authority has determined that it is the Group Supervisor. Requirements are set out in the areas of fitness and propriety, fair treatment of policyholders, corporate governance, reporting and solvency and are applied to the designated insurer as defined in the Insurance Act 2008.