

# **Guidelines on ring-fenced funds**

## Introduction

- 1.1. According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (hereinafter "EIOPA Regulation")<sup>1</sup> EIOPA is drafting Guidelines on ring-fenced funds.
- 1.2. The Guidelines relate to Articles 99(b) and 111(1)(h) of 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 (hereinafter "Solvency II")<sup>2</sup> as well as to Articles 80, 81, 216 and 217 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC (hereinafter "Commission Delegated Regulation 2015/35")<sup>3</sup>.
- 1.3. These Guidelines are addressed to supervisory authorities under Solvency II.
- 1.4. These Guidelines are intended to promote a consistent approach by assisting undertakings and supervisory authorities in:
  - (a) the identification of 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, having regard to the different national, legal and product frameworks in Member States which might give rise to ring-fenced funds and having regard to how these own-fund items are calculated;
  - (b) the determination of what constitutes assets and liabilities of the ring-fenced fund through identification of the assets and liabilities associated with any restricted own-fund items;
  - (c) the calculation of the notional Solvency Capital Requirement (hereinafter "SCR") for each ring-fenced fund where the SCR is calculated using the standard formula or using an internal model;
  - (d) the comparison of the amount of the restricted own-fund items within the ring-fenced fund with the notional SCR of the ring-fenced fund;
  - (e) the calculation by undertakings of the SCR where one or more ring-fenced funds exist;
  - (f) in the case where the SCR is calculated using an internal model, the nature of evidence undertakings should provide to supervisory authorities in order to assess the system for measuring diversification effects, taking account of any material restrictions on diversification which arise from the existence of ring-fenced funds.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 48–83

<sup>2</sup> OJ L 335, 17.12.2009, p. 1-155

<sup>3</sup> OJ L 12, 17.01.2015, p. 1-797

- 1.5. The requirement to calculate a notional SCR in respect of a ring-fenced fund does not require undertakings to maintain an amount of own funds within a ring-fenced fund equal to or greater than the notional SCR. However, where the amount of own funds within a ring-fenced fund is less than the notional SCR, the undertaking will not be in compliance with its SCR unless the total of the own funds within the ring-fenced fund and within the remaining parts of the undertaking combined are sufficient to cover that SCR, after application of the limits set out in Article 82 of Commission Delegated Regulation 2015/35.
- 1.6. These Guidelines, except for Guidelines 1 to 5, are relevant to the treatment of portfolios of assets and obligations to which a matching adjustment is applied following supervisory approval.
- 1.7. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.8. The Guidelines shall apply from 1 April 2015.

### **Guideline 1 - Characteristics and scope of ring-fenced funds**

- 1.9. Undertakings should identify ring-fenced funds by reference to the following characteristics:
  - (a) 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 a ring-fenced fund;
  - (b) ring-fenced funds may arise where profit participation forms part of the arrangement and also in the absence of profit participation;
  - (c) while the ring-fenced assets and liabilities should form an identifiable unit, in the same manner as though the ring-fenced fund were a separate undertaking, it is not necessary that these items are managed together as a separate unit or form a separate sub-fund for a ring-fenced fund to arise;
  - (d) where proceeds of, or returns on, the assets in the ring-fenced fund are also subject to the ring-fenced fund arrangement, undertakings are able to trace them at any given time, i.e. undertakings are able to identify items as covered by, or subject to, the arrangement giving rise to the ring-fenced fund.

### **Guideline 2 - Arrangements and products that are generally outside the scope of ring-fenced funds**

- 1.10. In the process of identifying ring-fenced funds, undertakings should consider the following arrangements and products as generally outside the scope of ring-fenced funds:
  - (a) conventional unit-linked products, as referred to in Article 132(3) of Solvency II;

- (b) conventional index-linked products, as referred to in Article 132(3) of Solvency II;
- (c) provisions, including technical provisions and equalisation provisions and reserves set up in accounts or financial statements prepared under the requirements applying in a particular jurisdiction are not ring-fenced funds solely by virtue of being set up in such financial statements;
- (d) conventional reinsurance business provided that individual contracts do not give rise to restrictions on the assets of the undertakings;
- (e) coverage assets and similar arrangements that are established for the protection of policyholders in the case of winding-up proceedings, either for the policyholders of the undertaking as a whole or for separate sections or groups of policyholders of the undertaking, including assets identified in the register in accordance with Articles 275(a) and 276 of Solvency II (the special register);
- (f) separation of life and non-life business in composite undertakings which carry out simultaneously life and non-life or health insurance activities set out in Articles 73 and 74 of Solvency II, but not disregarding the fact that a ring-fenced fund may still arise within either or both of the component parts of composite undertakings depending on the nature of the underlying business;
- (g) surplus funds are not ring-fenced solely by virtue of being surplus funds, but could be if they are generated within a ring-fenced fund;
- (h) transfer of a portfolio into an undertaking during a reorganisation of a business, where the separation of assets in respect of the existing business of the receiving undertaking from the assets of the transferred portfolio does not constitute a ring-fenced fund, if this separation has been put in place under national law to protect the existing business from the fund that is being transferred-in only on a temporary basis;
- (i) experience funds, where policyholders are entitled to a share of the experience of the fund in a manner, typically a minimum predefined percentage, set out in the policy documentation, and have no rights to any amounts not allocated in accordance with that specified profit-sharing mechanism. Amounts allocated to policyholders are included in technical provisions. Amounts not allocated to policyholders are fully transferable, can be returned to the shareholders or other providers of capital, can be used to absorb losses as and when they occur or can be, but are not required to be, used to increase benefits to policyholders and can therefore form part of own funds not subject to restriction.

### **Guideline 3 - Restrictions giving rise to ring-fenced funds**

1.11. Undertakings should identify the nature of any restrictions affecting assets and own funds within their business and the associated liabilities in respect of the contracts, policyholders or risks for which such assets and own funds can be used.

- 1.12. In order to identify any such restrictions which give rise to a ring-fenced fund undertakings should consider at least:
- (a) the contractual terms;
  - (b) any separate legal arrangement that applies in addition to the terms of a policy;
  - (c) provisions in the articles, statutes or other document giving rise to the undertaking's formation or organisation;
  - (d) national legislation or regulations in respect of product design or the conduct of the relationship between undertakings and their policyholders: ring-fenced funds would arise where, as a result of legal provisions protecting the general good in a Member State, an undertaking must apply particular assets only for the purposes of a particular part of its business;
  - (e) provisions of European Union law, whether transposed or directly applicable;
  - (f) arrangements specified by order of a court or other competent authority which require separation of or restrictions on assets or own funds in order to protect one or more groups of policyholders.
- 1.13. Undertakings should take into account all restrictions affecting assets and own funds in place at the time that the SCR is calculated, irrespective of the time period for which those restrictions apply on a going-concern basis.

#### **Guideline 4 - Scope of ring-fenced funds treatment**

- 1.14. Undertakings identifying characteristics and restrictions giving rise to ring-fenced funds treatment should at a minimum compare arrangements within their business with the following types of ring-fenced funds:
- (a) a fund of assets and liabilities in respect of profit participation ("with profits") business that is only available to cover losses arising in respect of particular policyholders or in relation to particular risks and where the following key features exist:
    - (i) policyholders within the ring-fenced fund have distinct rights relative to other business written by the undertaking;
    - (ii) there are restrictions on the use of assets, and the return on such assets, within this fund to meet liabilities or losses arising outside the fund;
    - (iii) an excess of assets over liabilities is generally maintained within the fund and this excess is restricted own funds, since its use is subject to the restrictions referred to in point (ii);
    - (iv) there is generally profit participation within the ring-fenced fund whereby policyholders receive a minimum proportion of the profits generated in the fund which are distributed through additional benefits or lower premium, and, if relevant, shareholders may then receive the balance of such profits;

- (b) a legally binding arrangement or trust created for the benefit of policyholders, where, within or separate to the policy documentation, an agreement calls for certain proceeds or assets to be placed in trust or subject to a legally binding arrangement or charge for the benefit of the specified policyholders;
- (c) ring-fenced funds, which reflect the restrictions on particular assets or own funds as specified in the articles, statutes or other document giving rise to the undertaking's formation or organisation;
- (d) ring-fenced funds that arise to reflect the effect of restrictions or arrangements specified in national law;
- (e) arrangements falling within the scope of European Union law, including Solvency II and Commission Delegated Regulation 2015/35:
  - (i) Article 304 of Solvency II, which introduces a requirement for ring-fencing regarding occupational retirement provision business and retirement benefits. As a result, this type of ring-fenced fund needs to be considered for a potential adjustment to own funds according to Articles 80 and 81 of Commission Delegated Regulation 2015/35. However, the requirement in Article 217 of Commission Delegated Regulation 2015/35 to calculate the SCR as the sum of notional SCRs for the ring-fenced funds and the remaining part does not apply, as Article 304 of Solvency II permits diversification effects to be recognised provided that the interests of policyholders and beneficiaries in other Member States are safeguarded;
  - (ii) Article 4 of Directive 2003/41/EC, which provides an option for Member States to apply certain provisions of that Directive to the occupational retirement provision business of insurance undertakings, subject to a ring-fencing requirement applying to the assets and liabilities of that business. This provision may be relevant in respect of business dealt with in this manner for undertakings which have not received authorisation under Article 304 of Solvency II. In this case, the requirements of Articles 81 and 217 of Commission Delegated Regulation 2015/35 apply. Until 31 December 2019, Article 308b(15) of Solvency II provides a transitional measure for this business permitting the use of the laws, regulations and administrative provisions adopted by Member States concerning the relevant articles of Directive 2002/83/EC.

1.15. Undertakings should recognise that the reduced transferability of assets and scope for diversification between the assigned portfolio of the matching adjustment and the remainder of the undertaking means that the assessments, assumptions and calculations set out in Articles 81, 216, 217 and 234 of Commission Delegated Regulation 2015/35 apply to such portfolios of the matching adjustment. Undertakings should apply Guidelines 6 to 17 where they have matching adjustment portfolios.

## **Guideline 5 - Materiality**

- 1.16. Where a ring-fenced fund is not material, Article 81 of Commission Delegated Regulation 2015/35 permits undertakings to exclude the total amount of restricted own-fund items from the amount eligible to cover the SCR and the Minimum Capital Requirement (hereinafter "MCR"). In this case, in accordance with Article 216 of Commission Delegated Regulation 2015/35, undertakings are not required to calculate a notional SCR for the ring-fenced fund. However, undertakings should include the assets and liabilities of the non-material ring-fenced fund within the remaining part of the undertaking. These assets and liabilities will form part of the undertakings' overall SCR calculation.
- 1.17. Undertakings should consider the materiality of a ring-fenced fund by assessing:
- (a) the risks arising from or covered by the ring-fenced fund;
  - (b) the assets and liabilities within the ring-fenced fund;
  - (c) the amount of restricted own funds within the ring-fenced fund, the volatility of those amounts over time and the proportion of total own funds represented by restricted own funds;
  - (d) the proportion of the undertaking's total assets and capital requirements that the ring-fenced fund represents, individually or combined with other ring-fenced funds;
  - (e) the likely impact of the ring-fenced fund on the calculation of the SCR due to the reduced scope for risk diversification.

## **Guideline 6 - Assets in a ring-fenced fund**

- 1.18. Undertakings should identify the assets in a ring-fenced fund as comprising any specified assets or pools of assets, and any related cash flows, which are restricted by the arrangements giving rise to the ring-fenced fund as described in Guideline 3.

## **Guideline 7 - Liabilities in a ring-fenced fund**

- 1.19. Undertakings should identify the liabilities in a ring-fenced fund as only comprising those liabilities properly attributable to the policies or risks covered by the ring-fenced fund or those for which the assets subject to restriction can be used. When determining liabilities of a ring-fenced fund in respect of profit participation business, undertakings should include within the best estimate liabilities any future discretionary benefits which the undertaking expects to pay.
- 1.20. Undertakings should ensure that the valuation of liabilities, including where appropriate future discretionary benefits, used for the purpose of the ring-fenced fund calculations is the same as the valuation which would have been derived for those liabilities if they were not included in a ring-fenced fund.

## **Guideline 8 - Future shareholder transfers**

- 1.21. When applying Article 80(2) of Commission Delegated Regulation 2015/35, undertakings should consider future transfers attributable to shareholders as:
- (a) only relevant in the context of profit participation business;
  - (b) coming into existence when the corresponding future discretionary benefits are recognised in the best estimate liability;
  - (c) being part of the ring-fenced fund's excess of assets over liabilities, not as a liability of the ring-fenced fund;
  - (d) including transfers which relate to declared bonuses already included in guaranteed benefits but where the corresponding distribution to shareholders has not yet been transferred out of the ring-fenced fund.

## **Guideline 9 - Calculating the notional SCR of a ring-fenced fund: standard formula**

- 1.22. Undertakings should perform the following steps in applying the methodology set out in Article 217 of Commission Delegated Regulation 2015/35:
- (a) in applying the SCR calculation methodology to the assets and liabilities within a ring-fenced fund as if the ring-fenced fund were a separate undertaking, undertakings should include a capital requirement for operational risk as well as any relevant adjustments for the loss-absorbing capacity of technical provisions and deferred taxes;
  - (b) in aggregating the capital requirements under the worst case scenario for the undertaking as a whole for each sub-module and risk module using the procedure for aggregation of the standard formula prescribed by Article 104 of Solvency II, undertakings may recognise diversification of risks within the ring-fenced fund;
  - (c) the capital requirement at the level of each ring-fenced fund should be calculated net of the mitigating effect of any future discretionary benefits. Where profit participation exists, assumptions regarding the variation of future bonus rates should be realistic and have due regard to the impact of the shock at the level of the ring-fenced fund, including the impact on the value of future transfers attributable to shareholders, and to any contractual, legal or statutory requirements governing the profit participation mechanism;
  - (d) if, as a result of bidirectional scenarios, the risk charge for the worst case scenario is negative, even after taking into account any potential increase of liabilities due to profit participation mechanisms, and would therefore result in an increase in basic own funds within the ring-fenced fund, then the charge should be set to zero.



## **Guideline 10 - Calculation of the notional SCR of a ring-fenced fund: internal model**

- 1.23. In order to calculate the notional SCR for a ring-fenced fund in accordance with Article 81(1)(a) of Commission Delegated Regulation 2015/35, undertakings should ensure that:
- (a) the internal model is capable of performing the calculation of the notional SCR for each ring-fenced fund as if each ring-fenced fund were a separate undertaking pursuing only the business included in that ring-fenced fund;
  - (b) the calculation of each notional SCR is consistent with the calculation of the SCR for the undertaking as a whole;
  - (c) the risk mitigation techniques and future management actions taken into account to calculate the notional SCR of each ring-fenced fund are consistent with the risk mitigation techniques and future management actions taken into account for the ring-fenced business in the calculation of the SCR for the undertaking as a whole, and with Guideline 9;
  - (d) the methodology and assumptions applied in calculating the notional SCR for the purposes of each ring-fenced fund should be consistent with those used in respect of the same types of assets, liabilities and risks in the calculation of the SCR for the undertaking as a whole;
  - (e) it only uses risk mitigation techniques, future management actions, methodologies or assumptions to calculate a notional SCR that differ from those used in the calculation of the SCR for the undertaking as a whole when necessary to produce a compliant notional SCR, and the justification for any differences is documented.

## **Guideline 11 - Determining whether restricted own funds within a ring-fenced fund exceed the notional SCR: standard formula and internal model**

- 1.24. Undertakings should compare the amount of the restricted own-fund items within the ring-fenced fund with the notional SCR of the ring-fenced fund calculated, as set out in Guidelines 9 or 10.
- 1.25. The effect of the adjustment required by Article 81(2) of Commission Delegated Regulation 2015/35 is to allow only an amount of own funds equal to the notional SCR to contribute to the coverage of the SCR of the undertaking as a whole and to the coverage of the MCR.
- 1.26. If the amount of own funds within a ring-fenced fund is equal to or less than the notional SCR of the ring-fenced fund, undertakings should not make any adjustment to own funds as there are no restricted own-fund items in excess of the notional SCR. In this case, all of the own funds within the ring-fenced fund are available to meet the SCR and the MCR.

## **Guideline 12 - Calculation of the SCR of the undertaking as a whole in the presence of ring-fenced funds: standard formula**

- 1.27. In calculating a separate notional SCR for the remaining part of the undertaking, undertakings should treat the assets and liabilities of that remaining part of the undertaking as though they were a separate undertaking and apply Guideline 9.
- 1.28. Without prejudice to Article 227(2) of Commission Delegated Regulation 2015/35, in calculating the SCR as the sum of the notional SCRs for each ring-fenced fund and for the remaining part of the undertaking, undertakings should not reflect any diversification benefits among ring-fenced funds or between ring-fenced funds and the remaining part of the undertaking.
- 1.29. Undertakings should set any negative notional SCRs to zero before aggregating such amounts with any positive notional SCRs of ring-fenced funds and the remaining part of the undertaking.

## **Guideline 13 - Calculation of the SCR of the undertaking as a whole in the presence of ring-fenced funds: internal model**

- 1.30. In accordance with Article 234(b)(ii) of Commission Delegated Regulation 2015/35 undertakings using an internal model should ensure that:
  - (a) they consider the manner in which the notional SCR for each ring-fenced fund is calculated;
  - (b) they consider how the system for measuring diversification effects takes into account any restrictions on diversification which arise from the existence of ring-fenced funds; and
  - (c) they provide evidence and information to supervisory authorities in relation to the following matters:
    - (i) the nature of the insurance business within each relevant ring-fenced fund and how this is the same as, or different to, the business carried on in other ring-fenced funds and the remaining part of the undertaking;
    - (ii) the degree of correlation of the risks attaching to those lines of business;
    - (iii) historical data demonstrating the incidence of losses affecting different parts of the business;
    - (iv) the rationale for and the nature of the restrictions affecting each relevant ring-fenced fund;
    - (v) an explanation of the source of diversification having regard to such restrictions and identification of key variables driving dependencies;
    - (vi) an analysis of any non-linear dependence and any material lack of diversification under extreme scenarios;

- (vii) the extent to which the data provided in (i) to (vi) support the observation of diversification effects among ring-fenced funds or between ring-fenced funds and the remaining part of the undertaking.

1.31. In accordance with Article 234(b)(ii) of Commission Delegated Regulation 2015/35 supervisory authorities should assess:

- (a) the manner in which the notional SCR is calculated, and diversification benefits are taken into account in the internal model;
- (b) whether the assumptions underlying the system used for measuring diversification effects are justified on an empirical basis with regard to the items listed in paragraph 1.30(c).

**Guideline 14 - Application of calculation methodology to similar ring-fenced funds**

1.32. Where an undertaking seeks to apply the same calculation methodology to multiple ring-fenced funds that exhibit similar characteristics, it should demonstrate to the satisfaction of the supervisory authority that the methodology produces sufficiently accurate results for each of the similar ring-fenced funds.

**Guideline 15 - Ongoing assessment: actions by the undertaking using an internal model**

1.33. In the event of changes to circumstances, which affect the accuracy of the evidence or information provided in accordance with Guideline 13, and which may affect the supervisory authority's assessment as to whether the reduction of diversification is appropriately reflected in the outputs of the undertaking's internal model, undertakings should determine whether a change to the internal model is needed, following the policy for changing the internal model. Undertakings should report to supervisory authorities any subsequent minor change as part of the quarterly reporting of minor changes. Undertakings should submit to supervisory authorities an application for approval of changes classified as major following the policy for changing the internal model.

**Guideline 16 - Ongoing assessments: actions by supervisory authority for internal models**

1.34. Supervisory authorities should establish procedures to review information received from undertakings regarding any changes to the ongoing ability of an internal model to provide results which properly reflect the diversification between or among the relevant ring-fenced funds and remaining part of the undertaking to which it is applied.

## **Guideline 17 - Reporting of the SCR split by risk modules for undertakings with ring-fenced funds or matching adjustment portfolios**

1.35. When calculating the amount of the SCR split by risk modules for the purposes of reporting in accordance with Article 311(2)(a) of Commission Delegated Regulation 2015/35 and public disclosure in accordance with Article 297(2)(b) of Commission Delegated Regulation 2015/35, undertakings using the standard formula should identify the effects of non-diversification. For this purpose, undertakings should allocate by risk modules the difference between the sum of notional SCRs calculated in accordance with Article 217 of Commission Delegated Regulation 2015/35 and the SCR of the undertaking as if there was no loss of diversification. When calculating this difference, undertakings may use one of the simplifications set out in the Technical Annex. The approach used should be consistently applied over time.

### **Compliance and Reporting Rules**

1.36. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities and financial institutions shall make every effort to comply with guidelines and recommendations.

1.37. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.

1.38. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

1.39. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

### **Final Provision on Reviews**

1.40. The present Guidelines shall be subject to a review by EIOPA.

## **Technical Annex - Simplifications for the calculation of the SCR as if there was no loss of diversification (Guideline 17)**

### Simplification 1 (direct summation at sub-module level)

1.41. The SCR as if there was no loss of diversification is calculated as follows:

- (a) for each sub-module of Life underwriting, Non-Life underwriting, Health underwriting, market and counterparty default risk modules, the (gross) capital charge of the entity is calculated as the sum of the (gross) capital charges across all ring-fenced funds and the remaining part;
- (b) the capital charges of the entity for Life underwriting, Non-Life underwriting, Health underwriting, market and counterparty default risk modules are calculated by aggregating the sub-module results determined above, using the relevant correlation matrices;
- (c) the capital charge of the entity for operational risk and intangibles is calculated as the sum of the capital charges across all ring-fenced funds and the remaining part;
- (d) the adjustment for loss absorbing capacity of technical provisions and deferred taxes is calculated as the sum of those adjustments across all ring-fenced funds and the remaining part;
- (e) the SCR as if there was no loss of diversification is obtained by using the usual SCR formula (as defined by Article 103 of Solvency II), taking as inputs all the numbers calculated above.

### Simplification 2 (direct summation at module level)

1.42. The SCR as if there was no loss of diversification is calculated as follows:

- (a) for each risk module (Life underwriting, Non-Life underwriting, Health underwriting, market and counterparty default), the (gross) capital charge of the entity is calculated as the sum of the (gross) capital charges across all ring-fenced funds and the remaining part;
- (b) the capital charge of the entity for operational risk and intangibles is calculated as the sum of the capital charges across all ring-fenced funds and the remaining part;
- (c) the adjustment for loss absorbing capacity of technical provisions and deferred taxes is calculated as the sum of those adjustments across all ring-fenced funds and the remaining part;
- (d) the SCR as if there was no loss of diversification is obtained by using the usual SCR formula (as defined by Article 103 of Solvency II) taking as inputs all the numbers calculated above.