



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2018

Guidance on the Approval and Supervision of Special Purpose Vehicles under Solvency II



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1 Introduction

1.1 Background

- 1.1.1 The European Union (Insurance and Reinsurance) Regulations 2015¹ (the "2015 Regulations") transpose Directive 2009/138/EC (the "Solvency II Directive")² into Irish law. The 2015 Regulations came into effect on 1 January 2016.
- 1.1.2 Commission Delegated Regulation (EU) 2015/35 (the "Commission Delegated Regulation")³ and Commission Implementing Regulation (EU) 2015/462 (the "Commission Implementing Regulation")⁴ set out specific rules for special purpose vehicles ("SPVs") related to, inter alia, authorisation, system of governance, supervisory reporting and solvency requirements.
- 1.1.3 This Guidance on the approval and supervision of SPVs ("Guidance") relates to those SPVs, both single and multi-arrangement SPVs, that:
 - (i) satisfy each of the criteria as outlined in the definition of SPV as set out in Regulation 3 of the 2015 Regulations
 - (ii) meet the conditions for authorisation set out in Article 318 of the Commission Delegated Regulation.

1.2 Objective

- 1.2.1 This Guidance aims to provide guidance on the approval and supervision of SII SPVs in the State. It is intended to assist SII SPVs by providing further details of the expectations of the Central Bank in respect of their compliance with the requirements of the 2015 Regulations, the Commission Delegated Regulation and the Commission Implementing Regulation. The Guidance does not purport to address every aspect of these requirements and it may be updated periodically if considered appropriate.

¹ S.I. No. 485 of 2015.

² Directive 2009/138/EC of the European Council and of the Parliament of 25 November 2009.

³ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II).

⁴ Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the cooperation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council text with EEA relevance.

1.3 Applicability

- 1.3.1 This Guidance applies to SII SPVs as defined under section 1.1.3 above.
- 1.3.2 This Guidance is to be read in conjunction with the relevant Solvency II requirements specified in the 2015 Regulations, the Commission Delegated Regulation and the Commission Implementing Regulation.
- 1.3.3 If there is a conflict between the 2015 Regulations, the Commission Delegated Regulation or the Commission Implementing Regulation and this Guidance, the 2015 Regulations, the Commission Delegated Regulation or the Commission Implementing Regulation (as applicable) shall apply.

2. Guidance

2.1 General expectations of the Central Bank in relation to SII SPVs

- 2.1.1 SII SPVs (i.e. both single arrangement and multi arrangement SII SPVs) seeking to establish in Ireland, or already established and seeking to commence new activities or arrangements, must comply with all relevant requirements for SII SPVs as set out in Solvency II⁵.
- 2.1.2 The following Guidance sets out some specific expectations of the Central Bank in terms of SII SPVs compliance with the relevant Solvency II requirements.

2.2 Requirement for SII SPVs to seek the prior approval of the Central Bank

2.2.1 Requirement to seek prior approval

- 2.2.1.1 Regulation 3 of the 2015 Regulations defines a SPV as “any undertaking, whether incorporated or not, other than an existing insurance undertaking or reinsurance undertaking, which assumes risk from insurance undertakings or reinsurance undertakings and which fully funds its exposure to such risk through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt financing mechanism are subordinated to the reinsurance obligations of such an undertaking”. Regulation 214 of the 2015 Regulations provides that a SPV “shall not be established in the State without the prior approval of the Central Bank”.
- 2.2.1.2 Therefore, a SPV which proposes to (i) assume risks from a (re)insurance undertaking through reinsurance contracts or (ii) assume insurance risks through similar arrangements, is required to seek authorisation from the Central Bank prior to establishing.
- 2.2.1.3 With respect to a SPV assuming insurance risks “through similar arrangements”, the Central Bank, when assessing the application for authorisation, will consider whether the method proposed for the transfer of insurance risk constitutes the transfer of such risk through an arrangement similar to a reinsurance contract notwithstanding the nature or form of contract used to transfer that risk or the trigger type⁶.

⁵ “Solvency II” refers collectively to the 2015 Regulations, the Commission Delegated Regulation and the Commission Implementing Regulation

⁶ e.g. an industry loss index, a parametric trigger

2.2.1.4 The Central Bank may only authorise a SPV if it satisfies each of the conditions for authorisation set out in Article 318 of the Commission Delegated Regulation. Therefore, any application for approval of a SPV is expected to demonstrate, to the satisfaction of the Central Bank, that the SPV meets all the conditions of Article 318 of the Commission Delegated Regulation. If approved, it will from that point onwards be considered by the Central Bank as a SII SPV.

2.2.1.5 SPRVs⁷ that have been authorised prior to the adoption of Solvency II shall not be subject to the requirements of Solvency II. However, in accordance with Regulation 214(3) of the 2015 Regulations, if any new activity is commenced by such vehicles on or after 1 January 2016, this will require the prior approval of the Central Bank.

2.2.2 **Requirement for Multi-Arrangement SPVs to seek approval**

2.2.2.1 The establishment of a multi-arrangement SPV ("MA SPV") is permitted under Solvency II provided it meets the relevant requirements of the Commission Delegated Regulation and the Commission Implementing Regulation. A MA SPV is defined in Article 2 of the Commission Implementing Regulation as a "special purpose vehicle which assumes risks under more than one separate contractual arrangement from one or more insurance or reinsurance undertakings". As such, a MA SPV is a SPV that will take on more than one contract for risk transfer from one or more cedants.

2.2.2.2 The Central Bank expects that, where at least one arrangement of a MA SPV satisfies the criteria in section 2.2.1 above the MA SPV will seek the prior approval of the Central Bank to establish in the State.

2.3 **Mandatory contract conditions**

2.3.1 **Fully funded requirement**

2.3.1.1 In accordance with Articles 319 and 326 of the Commission Delegated Regulation, SII SPVs must be fully funded at all times. The Central Bank expects SII SPVs to demonstrate their compliance with these requirements both within their application for approval and their annual supervisory report to the Central Bank.

2.3.1.2 The Central Bank is aware of the practice, and the value, of using limited recourse clauses within reinsurance or similar arrangements

⁷ Special Purpose Reinsurance Vehicles as defined in Section 3 of the European Communities (Reinsurance) Regulations 2006, S.I. 380 of 2006.

entered into between insurance or reinsurance undertakings for the purpose of managing compliance with the fully funded requirement. However, such clauses when used, should not undermine the effective risk transfer from the cedant (re)insurer.

2.3.1.3 Furthermore, contingent arrangements should not at any stage be relied upon to meet the fully funded requirement. In addition, payments expected to be received from the cedant (re)insurer can be recognised as an asset only if the requirements of Article 326(4) of the Commission Delegated Regulation are met.

2.3.2 **Effective risk transfer**

2.3.2.1 SII SPVs must comply at all times with the requirements of Article 320 of the Commission Delegated Regulation with regard to effective risk transfer and shall demonstrate their compliance with these requirements both within their application for approval and their annual supervisory report to the Central Bank. With respect to the foregoing, SII SPVs may wish to consider the provision of independent legal opinions in assisting them demonstrate their compliance with this requirement.

2.3.3 **Rights of providers of debt or financing mechanism**

2.3.3.1 SII SPVs must comply at all times with the requirements of Article 321 of the Commission Delegated Regulation as regards subordinating the rights of the providers of debt or financing mechanisms to the SII SPVs obligations to its cedants and shall demonstrate their compliance with these requirements within their application for approval to the Central Bank. SII SPVs may wish to consider the provision of independent legal opinions in assisting them demonstrate their compliance with these requirements.

2.3.3.2 Article 326 of the Commission Delegated Regulation requires that the proceeds of debt issuances or other financing mechanisms are fully paid-in in order for the SII SPV to be considered fully funded. Therefore, the Central Bank expects the debt, or proceeds from other financing mechanisms to a SII SPV have been fully paid in (i.e. received by the SII SPV) before the SII SPV accepts risks from the insurance or reinsurance undertaking(s). At no time should their assets be insufficient to meet their liabilities as they fall they due.

2.4 System of governance in SII SPVs

2.4.1 General system of governance requirements

2.4.1.1 Articles 318(f) and 324 of the Commission Delegated Regulation require that SII SPVs have effective systems of governance, which provide for sound and prudent management of the SII SPV taking account of the nature, scale and/or complexity of the risks they assume and the purpose for which they are authorised. The systems of governance should include appropriate and effective written policies, internal controls and risk management systems.

2.4.1.2 SII SPVs shall demonstrate their compliance with these requirements both within their application for approval and their annual supervisory report to the Central Bank.

2.4.1.3 In its assessment of the appropriateness of the proposed system of governance for SII SPVs, the Central Bank will consider, amongst other things, the proposed organisational structure and the information and reporting systems of the SII SPVs.

2.4.1.4 In the context of the organisational structure, in certain circumstances the Central Bank will consider, based on the nature, scale and/or complexity of the proposed SII SPV and its activities, whether there is a need for the appointment of direct employees, with relevant expertise and skills, to the SII SPV.

2.4.1.5 The system of governance should provide for adequate identification, reporting and management of any material or potential conflicts of interest, including any that may arise amongst the various parties to the arrangements into which the SII SPV enters.

2.4.2 Persons who effectively run the SII SPV

2.4.2.1 Article 322 of the Commission Delegated Regulation requires that SII SPVs ensure that all persons who effectively run the SII SPV are fit and proper.

2.4.2.2 SII SPVs shall demonstrate compliance with this requirement within their applications for approval, in any relevant interim report and in their annual supervisory report to the Central Bank.

2.4.2.3 Furthermore, as regulated financial services providers (RFSPs)⁸, SII SPVs are required to comply with the Central Bank's Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010 (the "F&P Regime")⁹. The F&P Regime sets out requirements in relation to Pre Approval Controlled Functions ("PCFs") and Controlled Functions ("CFs") which all RFSPs must comply with. One aspect of these requirements is that all persons who hold PCFs (including directors and certain senior managers) within RFSPs must be pre-approved by the Central Bank prior to appointment. To comply with this requirement, SII SPVs must ensure that all proposed PCFs complete an individual online questionnaire. The SII SPV reviews the individual's complete online questionnaire and submits it to the Central Bank's for consideration and approval, prior to appointing the individual in question.

2.4.3 **Fit and proper requirements for shareholders or members with qualifying holdings**

2.4.3.1 Articles 318(e) and 323 of the Commission Delegated Regulation require that shareholders or members with qualifying holdings¹⁰ are fit and proper for their role taking account of specific criteria.

2.4.3.2 SII SPVs shall demonstrate compliance with this requirement within their application for approval, in any relevant interim report and in their annual supervisory report to the Central Bank. Annex III to this Guidance provides a template that all proposed shareholders or members with qualifying holdings should complete as part of the approval process or where there is a change in qualifying holdings.

2.4.4 **Outsourcing by SII SPVs**

2.4.4.1 As part of the requirement to have an effective system of governance in place, where a SII SPV proposes to outsource any function or activity, full responsibility for that function or activity lies with the SII SPV.

2.4.4.2 Prior to deciding on an outsourcing arrangement a SII SPV should ensure that the proposed outsourcing will not lead to any of the following:

⁸ As defined in the Central Bank Act, 1942

⁹ More details on the Central Bank's Fitness and Probity Regime are available on the Central Bank website: <http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Pages/default.aspx>

¹⁰ As per the definition in Regulation 3 of the 2015 Regulations.

- a material impairment of the quality of the system of governance,
- a material increase in operational risk, or
- any impairment of the Central Bank's ability to monitor compliance with relevant obligations.

2.4.4.3 Where a SII SPV proposes to outsource a critical or important function or activity¹¹, the SII SPV should notify the Central Bank of its intention to do so in their application for approval. Information provided should include:

- information on the scope of and rationale for outsourcing,
- information on the proposed service provider, including how they are in a position and suitable to perform the outsourced function or activity, and
- information on the controls and oversight that will be put in place within the SII SPV itself over the outsource arrangement to ensure the requirement of 2.4.4.2 is met on an ongoing basis.

2.4.4.4 Where a SII SPV proposes to make any material change to an existing outsourcing arrangement in respect of a critical or important function or activity, it should notify the Central Bank in writing at least 10 days in advance of that change coming into effect. The notification shall include all developments on the proposed change that are relevant for supervisory purposes (i.e. any circumstances that may give supervisors reasons to reassess the SPV's compliance with Solvency II requirements) along with the information set out in 2.4.4.3 as appropriate.

2.4.4.5 The outsourcing arrangement can be considered as accepted where no concerns are raised by the supervisor and brought to the attention of the SII SPV in advance of the date that the outsourcing arrangement is due to come into effect.

2.4.5 **Investors in SII SPVs**

2.4.5.1 As the debt or financing instruments issued by SII SPVs tend to be complex investment instruments, SII SPVs should ensure that the investors in the instruments they issue fully understand the risks associated with the instrument. For that reason, the Central Bank expects SII SPVs to provide evidence in their application for approval that the investors in the instruments they issue meet the definition of

¹¹ As defined in Guideline 60 of the EIOPA "Guidelines on system of governance"

a Professional Client¹² as set out in the European Union (Markets in Financial Instruments) Regulations 2017.

2.5 Applications for approval of SII SPVs

2.5.1 General requirement on applications for approval of SII SPVs

2.5.1.1 Article 5 and, where relevant, Article 7 of the Commission Implementing Regulation, together with Annex I to that regulation, set out the minimum information and documentation that must be provided in an application for approval of a SII SPV.

2.5.1.2 In addition, the Central Bank has provided checklists (the “Checklists”) for completing applications for the approval of SII SPVs in Annex I to this Guidance. In this regard, Annex I (a) relates to (i) all applications from single arrangement SII SPVs and (ii) stage 1 applications from MA SPVs. Annex I (b) relates to stage 2 applications from MA SPVs. The application process for MA SPVs is explained further below.

2.5.1.3 All applications for approval of SII SPVs should comply with Article 5, and where applicable Article 7, of the Commission Implementing Regulation and the Checklists.

2.5.1.4 In accordance with Article 9 of the Commission Implementing Regulation, the Central Bank shall consult with the supervisory authority of the insurance or reinsurance undertaking proposing to transfer risk to the SII SPV before granting an approval.

2.5.2 Applications for approval of MA SPVs

2.5.2.1 MA SPVs are likely to be more complex than their single arrangement equivalents. The Central Bank considers, in the case of a MA SPV, that it is difficult to demonstrate adequately full compliance with all the requirements for SII SPVs, in particular regarding future arrangement(s), within a single stage application process. On that basis, the Central Bank approval process for such vehicles will involve 2 stages as follows:

2.5.2.2 **Stage 1.** This is the main assessment stage where the information provided to the Central Bank should enable the Central Bank to assess whether there is sufficient evidence of compliance with the relevant Solvency II requirements to approve the MA SPV and on this basis to

¹² S.I. No. 375 of 2017.

issue an 'Approval in Principle Letter', which should not be interpreted as a final approval of the MA SPV as it may be revoked.

2.5.2.3 The information to be provided at stage 1 is set out in Annex I (a) to this Guidance and includes:

- All information on the overall structure, ownership and governance of the MA SPV,
- All available information, including supporting documentation and evidence, on all proposed activities of the MA SPV both at the time of approval and over the lifetime of the MA SPV. This includes information on all proposed future arrangements (i.e. those that will be subject to the stage 2 assessment),
- Full and detailed information, including final or almost final version(s) of relevant contract(s) and supporting documentation and evidence, on all arrangement(s), which are planned to occur straight away after stage 1 approval is obtained.

2.5.2.4 Conditional on the MA SPV fulfilling the approval requirements outlined by the 'Approval in Principle Letter', the Central Bank will then issue the 'Final Approval Letter' for the MA SPV and any arrangement(s), which the MA SPV will enter immediately after obtaining stage 1 approval.

2.5.2.5 **Stage 2.** A second assessment stage occurs just prior to any planned future arrangement(s) commencing. The MA SPV should provide detailed information, including final or almost final versions of contracts and supporting documentation and evidence, on the impending arrangement(s) to enable the Central Bank to assess whether the arrangement(s) comply with the original approval received and the relevant Solvency II requirements.

2.5.2.6 The MA SPV should not proceed with proposed future arrangement(s) until it has received a 'Final Approval Letter' from the Central Bank following the completion of stage 2 assessment.

2.5.3 **Timing of applications**

2.5.3.1 Article 4 of the Commission Implementing Regulation provides that the Central Bank must decide on an application for approval within 6 months of receipt of a complete application. The Central Bank is committed to delivering an effective and efficient authorisation process. Depending upon the complexity of the application and the level and adequacy of detail provided in the application, the timeline

for reaching a decision regarding the approval of a SII SPV may be shorter.

2.5.3.2 In terms of the stage 2 assessment, in the case of an MA SPV application, the Central Bank will aim to decide on that assessment within 10 working days of receipt of a complete pack as set out in Annex I (b) to this Guidance.

2.6 Supervisory reporting

2.6.1 General Reporting Requirements for SII SPVs

2.6.1.1 Article 325 of the Commission Delegated Regulation provides that supervisory authorities may request such information as is necessary to supervise SII SPVs. This Article, along with Articles 13 to 18 of the Commission Implementing Regulation, set out the requirements for SII SPVs in relation to reporting to supervisory authorities.

2.6.1.2 SII SPVs shall comply with these requirements at all times and demonstrate how they will do so in their application for approval.

2.6.1.3 Article 17 of the Commission Implementing Regulation provides that the quantitative content of the annual report should be submitted to supervisory authorities electronically and the qualitative content should be submitted in an electronic readable format. The Central Bank expects all SII SPVs to provide the quantitative content of their annual supervisory report in XBRL¹³ format and the qualitative content of the report in word or PDF format. This information shall be submitted within the timeframe set out in Article 325 of the Commission Delegated Regulation and via the Central Bank's ONR¹⁴ system.

2.6.2 Compliance Statement and Directors' Accuracy Certificate

(I) Compliance Statement

2.6.2.1 Section 25 of Part 4 of the Central Bank Act 1997 (the "1997 Act") empowers the Central Bank to require, by notice in writing, a regulated financial service provider ("RFSP") to provide to the Central Bank a compliance statement specifying whether the RFSP has, during the period specified in the Central Bank's notice, complied with its "relevant

¹³ eXtensible Business Reporting Language (XBRL) format is used for reporting data submission between the Central Bank and (re)insurance undertakings

¹⁴ Central Bank's web based Online Reporting System

obligations”, or with such of its relevant obligations as are specified in the notice.

2.6.2.2 For these purposes, “relevant obligations” means the RPSP’s obligations under -

- a) all designated enactments and all designated statutory instruments that apply to it, and
- b) all codes, guidelines and notices issued by the Central Bank that apply to it, and
- c) all other enactments and statutory instruments with which it must comply.

2.6.2.3 Pursuant to its powers under section 25 of the 1997 Act, the Central Bank will serve a notice (the “Notice”) in writing on each SPV that it approves as a SII SPV requiring the SII SPV to provide a compliance statement to the Central Bank specifying whether the SII SPV has, during the period specified in the Notice, complied with its relevant obligations or such of them as are specified in the notice.

2.6.2.4 SII SPVs are expected to comply with the relevant obligations, and as arising by a Notice issued under section 25 of the 1997 Act, are required to submit to the Central Bank a Compliance Statement in the format set out in Annex II (Part A) to this Guidance, together with supporting documentation relevant to any material non-compliance reported, so as to accurately reflect the relevant status of the undertaking as of the date of submission.

2.6.2.5 The compliance statement should be provided to the Central Bank no later than the date on which the SII SPV is required to submit its annual supervisory report to the Central Bank. Prior to providing the compliance statement, all persons holding the position of director within a SII SPV at the end of the financial year to which the compliance statement refers and who continue to hold that position at the time of providing the compliance statement, shall attest to the accuracy of the information contained in the compliance statement, and do so by signing the Compliance Statement.

(II) Directors’ Accuracy Certifications

2.6.2.6 Furthermore, SII SPVs should submit to the Central Bank an annual directors’ certification of the accuracy of the information provided in the annual supervisory report. The directors’ accuracy certification should be submitted at the same time as the report to which it relates. All persons holding the position of a director within the SII SPV as of its date of submission of the annual supervisory report, should attest

to the accuracy of the information contained therein, and do so by signing the certification in the format set out in Annex II (Part B) to this Guidance.

2.6.2.7 Where the annual supervisory report, to which a directors' accuracy certification relates, materially changes and therefore requires resubmission to the Central Bank, a new directors' accuracy certification of the report should be provided at the same time as the resubmitted report.

2.7 Solvency requirements on Investments

2.7.1 SII SPVs must comply at all times with the requirements of Article 327 of the Commission Delegated Regulation with regard to the investment of the assets of SII SPVs and shall demonstrate their compliance with these requirements within their application for approval and in their annual supervisory report to the Central Bank.

2.8 Supervision of SII SPV

2.8.1 The Central Bank will supervise SII SPVs in line with its Probability Risk and Impact System (PRISM)¹⁵ framework for the supervision of regulated firms.

¹⁵ More information on PRISM is available on the Central Bank website here: <http://www.centralbank.ie/regulation/processes/PRISM/Pages/default.aspx>

Annex I – Checklists for applications for approval of SII SPVs

Notes relevant to both checklists:

- Complete all sections of the relevant checklist.
- Insert the relevant section number, from the application, in the column of boxes entitled 'Applicant'. (The last column is for Central Bank's use only).
- Where the checklist states 'confirm' a '√' will be accepted as a confirmation.
- Where the required confirmation/documentation/information is not provided with/in the application, please refer to this in the covering letter indicating the planned submission date thereof. (Delays in submitting required confirmations, documentation and/or information will delay the authorisation timeframes).
- All documents to be submitted in English (or Irish if desired) only.
- References to individual Articles refer to Articles in the Commission Delegated Regulation unless otherwise stated.

Notes relevant to specific checklists:

General checklist for all SII SPV Applications

- This checklist should be completed by all SII SPV applicants irrespective of whether the application is in relation to a Single Arrangement or MA SPV.
- In the case of a Single Arrangement SII SPV this checklist should be provided along with the single and only application required.
- In the case of a MA SPV this checklist should be completed and submitted along with the stage 1 application to facilitate the stage 1 assessment by the Central Bank.

MA SPV second stage checklist

- This checklist should be completed by all MA SPVs when submitting a completed stage 2 assessment pack.

Annex I (a)

General checklist for SII SPV applications (all single arrangement applications and all stage 1 applications for MA SPVs)

1.0	<u>Details of the Applicant</u> ¹⁶	Applicant	Central Bank
1.1	Supply full name and address.		
1.2	Provide the contact details (name, address, telephone and email) of an individual who will accept receipt of any correspondence from the Central Bank in respect of the application.		
1.3	Provide contacts details (name, address, telephone and email) of professional advisors in respect of the application.		
1.4	Confirm that the Central Bank can liaise with the named professional advisors in respect of the application.		
1.5	Outline whether the SII SPV will be a single or MA SPV (if it is proposed to be a MA SPV please provide the information requested in 1.7.)		
1.6	Provide a detailed description, including organisational chart/diagram, of the proposed SII SPV activity identifying, where possible, all the relevant parties involved in each arrangement of the SII SPV, where there is more than one, including the insurance or reinsurance undertaking (cedant), investor(s), service provider, etc ¹⁷ . (In the case of MA SPVs, it may be that full and final information about all elements of future arrangements, i.e. those subject to a stage 2 assessment, is not known. In that case sufficient indicative information should be provided that will allow the Central Bank decide on the compliance of the proposed activities with the relevant requirements. However, precise information must be provided for any arrangements that the SII SPV proposes to enter into immediately after receiving approval and no future arrangements should be entered into without completing the stage 2 assessment as outlined in the Guidance on the Approval and Supervision of SII SPVs. Provision of incomplete information will affect the timeline in which the Central Bank can respond on any application).		

¹⁶ The "applicant" or "the SII SPV" refers to the entity seeking approval from the Central Bank

¹⁷ Where the application is in respect of a MA SPV a separate diagram should be provided for each proposed arrangement

1.7 For MA SPVs please provide the following information covering all potential activities over the lifetime of the MA SPV:

- Expected lifetime of MA SPV
- Proposed number of contractual arrangements
- Details of proposed risks/insurance risks to be accepted including: types and location of risks, nature and location of cedants, proposed loss triggers, expected maximum aggregate risk exposure by contractual arrangement and in total for the MA SPV and any other relevant information
- Information on proposed debt or funding mechanisms including; type, structures and ratings of funding mechanisms to be used, information on investors and any other relevant information
- Information on how the MA SPV will remain fully funded at all times and how it will ensure that its solvency is never affected by the winding up of one or more cedants

2.0 Overview of Sponsor / Cedant / Investors

2.1 Provide information about the identity and qualification of the originator or sponsor of the SII SPV.

2.2 Provide details on the financial strength of sponsor to include:

a) Most recent Audited Financial Statements; and

b) Financial Rating.

2.3 Please provide information about the insurance or reinsurance undertaking¹⁸ transferring risk to the SII SPV, to include:

a) Most recent Audited Financial Statements of the cedant and its group, as relevant; and

b) Financial rating of the cedant and its ultimate parent group, as relevant.

2.4 Please provide details of all investors¹⁸ to include:

a) List and information on proposed investors; and

¹⁸ In the case of a MA SPV this information should be provided for each arrangement that is proposed to be entered into post approval. The information provided should be distinguished by arrangement.

- b) Details including proof of professional status/expertise/qualification to assume the risk proposed.

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3.0 Regulatory Supervision of Cedant

- 3.1 Confirm that the cedant has notified its home supervisory authority of its intention to transfer risk to a SII SPV which is seeking approval from the Central Bank.

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- 3.2 Please provide a copy of all related correspondence with the home country supervisory authority.

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- 3.3 Provide contact name and contact details of the individual and department in the home supervisory authority who has supervisory responsibility for the cedant.

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4.0 Ownership Structure

- 4.1 Provide information about the identity and qualifications of:

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- a) All direct holders of shares or other interests in the SII SPV; and

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- b) All indirect holders of shares/interests who have qualifying holdings¹⁹ in the SII SPV.

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- 4.2 Please complete Annex III for all holders of a "qualifying holding" and please submit an Individual Questionnaire for each holder of a "qualifying holding" along with your application. Please contact the Authorisations team to arrange access to the Online Reporting System.

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5.0 Legal Structure of SII SPVs

- 5.1 Confirm that the SII SPV will be registered in Ireland as a designated activity company (DAC) and subject to Irish law.

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- 5.2 Outline the full legal structure of the SII SPV.

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- 5.3 Confirm the following documentation accompanies this checklist:

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¹⁹ Qualifying holdings are defined in Regulation 3 of the EU (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).

a)	A certified ²⁰ copy of the Certificate of the Incorporation of the SII SPV (and Certificate of Name Change if applicable); and		
b)	A draft copy of the Memorandum and Articles of Association of the SII SPV. (The final copy will be required immediately after approval of the applicant).		
5.4	Confirm that the SII SPV is not an intra-group SPV (i.e. one where no element of finance is raised externally).		
5.5	Confirm that the SII SPV assumes:		
a)	risk from an insurance or reinsurance undertaking through a reinsurance contract; or		
b)	insurance risks through similar arrangements, or		
c)	Both of the above (which may be the case with some MA SPVs) providing more detail to explain this.		
6.0 Details of proposed reinsurance or similar arrangements			
6.1	In relation to the SII SPV's reinsurance contract or similar arrangements, clearly set out and provide ¹⁸ :		
a)	Full details of the proposed reinsurance contract or similar arrangement to be entered into by the SII SPV;		
b)	Information about the identities and qualifications of the ceding undertaking under the relevant SII SPV contract;		
c)	Details of the ceding undertakings' original insurance policies clearly detailing which risks were initially assumed by the cedant and which will be transferred to the SII SPV, along with an assessment and a description of how the transfer of ceded risks via the relevant type of contract will comply with the requirements of Article 320;		
d)	Details of the draft contractual arrangement relating to the transfer of risk between cedant and the SII SPV, including a description of how the contract will meet the requirements of Articles 210, 211, 235 and 319 and 320, including:		
-	Any relevant triggering events or mechanisms under the contract; and		

²⁰ A certified document is one that is stamped, signed and dated as being a true copy of the original at a particular date in time by a party independent of the applicant. Please note that the certification stamp must be present on the relevant document.

-	The maximum aggregate risk exposure of the contract.		
e)	A description of any terms and conditions for payments under the contract between the SII SPV and the cedant;		
f)	Actuarial assessment of (insurance) risk assumed /calculation agent's report;		
g)	Rationale for the proposed transfer of (insurance) risk and the level of risk to be assumed by the SII SPV.		
h)	Transactional documentation, or drafts thereof, governing parts of the contractual arrangements relating to the transfer of risk from an insurance or reinsurance undertaking to the SII SPV, which may be understood as a connected transaction as provided in Article 210(4) and Article 320(2). Where applicable, this may include contracts with other participants to the transaction, as well as outsourcing and service contracts.		

7.0 Regulatory Compliance Assessment

7.1	Provide an assessment outlining how the legal and governance structures of the SII SPV are deemed to comply with the requirements of Articles 210, 235 319, 320, 324, 326 and 327 and the relevant expectation set out in the Central Bank's Guidance, including:		
a)	An opinion on whether the legal structure chosen for the SII SPV affords a legally enforceable protection of the assets of the SII SPV, thereby ensuring that the solvency of the SII SPV shall not be adversely affected in line with the requirements of Article 318 (b) and 321.		
b)	An explanation of how the SII SPV is, and will remain, fully funded, including relevant tests, such as stress and scenario tests, to determine if the fully funded requirements has been complied with and how the status will be maintained;		
c)	Full information on the SII SPV equity, including size, growth, investor concentration, and on the SII SPV management share of that equity ²¹ ;		
d)	Full details of all the roles and identities of other participants in the arrangement (not covered elsewhere in this checklist) including, but not limited		

²¹ Any assets or rights of the SII SPV held or controlled by the cedant should be separately identified from the non-securitised assets and rights of the cedant.

	to, account managers, account servicing managers, custodians and trustees, asset managers, underwriters and sponsors to the transaction. This shall also include an assessment of the applicable accounting consolidation requirements of the SII SPV into a group;		
e)	Information on all quantifiable risks of the SII SPV including details of the SII SPV liquidity risk and liquidity strategy;		
f)	Information on risk implication of the SII SPV's proposed investment strategy;		
g)	Information on the SII SPV adherence to the solvency requirements on investments of Article 327;		
h)	Details of any material residual risks in the SII SPV, including basis risk;		
i)	Details on, if any, the use of hedging instruments, such as interest rate swaps or currency contracts;		
j)	Details of any off-balance sheet commitments to support the SII SPV, including guarantees or any other form of credit risk mitigation sold to or otherwise provided to the SII SPV;		
k)	Financial projections over the expected life of the SII SPV (including operating and overhead expenses). In the case of MA SPVs this should be provided by arrangement and in total;		
l)	A draft plan outlining the SII SPV reporting procedures, designed to comply with the requirements of Articles 325 to 327, and the expectations outlined in the Central Bank Guidance including specific reportable matters identified under Articles 325(2), and with regards to how material changes would be communicated to the Central Bank.		
7.2	Provide the proposed investment strategy of the SII SPV which complies with Article 327.		
7.3	Provide details of investment authority and guidelines for assets held in Trust, along with details of any leverage permitted with these guidelines.		
7.4	Information on risk implications of the SII SPV investment strategy;		
7.5	Contracts, or drafts thereof, and details of any hedging instrument, such as interest rate swaps or currency contracts;		

7.6	A contingency plan explaining what will occur if:		
a)	The fully funded principle is breached;		
b)	A disagreement arises over whether a payment is due to the undertaking;		
c)	A counterparty to a material transaction is unable to fulfil the terms of the transaction; and		
d)	Any other matters that would materially affect the operation of the SII SPV.		
7.7	Confirmation as to whether the SII SPV is a "financial institution" and a "designated person" for the purposes of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013 ('CJA 2010')		
	<i>Please refer to Part 4 of the CJA 2010 for the obligations of designated persons under the CJA 2010. The definitions of "financial institution" and "designated person" are set out in sections 24 and 25 thereof.</i>		

8.0 Details of Debt or Financing Mechanism

8.1	Provide information, including final or near final transaction documentation, regarding the issue of debt or financial instruments and risk transfer to providers of such debt or financing mechanism, to explain how compliance with Articles 210, 211, 320 and 321 will be maintained, including:		
a)	Prospectus/Offering Circular or Private Placement Memorandum, or drafts thereof;		
b)	Rating assessment or credit rating agency's report prior to the issue of the funding instruments by the SII SPV;		
c)	Details relating to the potential use of financial guarantors on any of the "tranches" of notes to be issued;		
d)	Trustee agreement, where such an arrangement exists, or drafts thereof;		
e)	With regard to debt or financing mechanisms, details of the SII SPV liquidity strategy for the issued financial instruments, including the structure and tiering, types of positions, and note holder withdrawal rules;		
f)	Demonstrate how the investors have a subordinated claim on the SII SPV assets.		

g) Provide an overview and confirmation that investors will not have recourse to assets of the ceding undertaking

8.2 Provide information on any potential conflicts of interest that may arise in respect of the interactions among the various parties to the arrangements/contracts into which the SII SPV will enter and how that will be appropriately managed by the SII SPV.

9.0 System of Governance

9.1 Board of Directors: Provide details of the proposed board of directors and their activities to include proposed frequency of board meetings.

9.2 Management: Provide details as to how the day-to-day management of the SII SPV will be carried out including an organisational chart showing all the functions and reporting lines within the SII SPV.

9.3 Provide information about the identity and qualification of the persons who will effectively run the undertaking, or will be, employees of the SII SPV, including details of persons who it is proposed will hold Pre-Approved Controlled Functions (PCFs) in the SII SPV.

9.4 An 'Individual Questionnaire' must be completed for PCFs. The Individual Questionnaire must be completed through the Central Bank's Online Reporting System. Please contact the Central Bank's Authorisation team to arrange for the applicant to have access to the Online Reporting System.

Please refer to the 'Fitness and Probity' regime available on the Central Bank of Ireland's website for further information on PCF's and due diligence to be undertaken to assess a person's fitness and probity to perform a controlled function (CF)²².

10.0 Risk Oversight

Detailed information is required in respect of the following functions of risk oversight:

10.1 Credit Risk

a) Please provide details of the procedures in place to; ensure that the SII SPV monitors and reports to the

²² <http://www.centralbank.ie/regulation/processes/fandp/Pages/IntroductiontoFitnessandProbity.aspx>

	Board of Directors counterparty credit risk, and to exercise the contractual remedies available to it as set out in the various agreements;		
b)	Provide details of the criteria for accepting/selecting counterparties to the SII SPV.		
10.2	Administrative and accounting procedures, written policies, internal controls and risk management techniques		
a)	Provide details of the administrative and accounting procedures, written policies, internal controls and risk management techniques proposed which are proportionate to the nature, scale and complexity of the SII SPV; and		
b)	Provide details about the identity and qualification of the persons who are providing or will provide management services and other professional service (such as accounting) to the SII SPV.		
10.3	Outsourcing		
a)	Please provide full details of any outsourcing by the SII SPV to either related companies and third parties, including:		
	Name and description of the function or activity to be outsourced and rational for outsourcing;		
	Name of the service provider and details of how they are in a position and suitable to perform the outsourced function or activity;		
	Name of the person responsible for the function or activity at the service provider;		
	The scope of activities to be outsourced (outlining whether chain or sub-outsourcing is proposed); and		
	Measures the SII SPV has in place in respect of the control and oversight of the outsourced activity/function (including persons responsible for the activity/function in the SII SPV) and details of key performance indicators to be used.		
b)	Confirm that Service Level Agreements (SLAs) will be in place in relation to all outsourced activities and provide copies of all SLAs including flow charts indicating all outsourced activities;		
c)	Confirm that the Central Bank will have full and unrestricted access to all information related to outsourced functions or activities as well as to the		

	service providers' business premises if an on-site inspection or audit is to be performed;		
	<i>Please note that the Central Bank will expect to see evidence of this provision in all outsourcing agreements.</i>		
d)	Confirm that the SII SPV (i) compliance function, (ii) internal audit function and (iii) external auditors will have full and unrestricted access to all information related to outsourced functions or activities as well as to the service provider's business premises if an on-site inspection or audit is to be performed;		
e)	Please provide details of provisions for termination of the agreement including rights and obligations of the SII SPV and outsourcing service provider in those circumstances.		
11.0 Other			
11.1	Confirmation that the Central Bank shall be notified without delay of any material changes to the current business plan and application.		
11.2	Provide any other information relevant to the application.		

Confirmation from Applicant and the Service Provider Responsible for Preparation of the SII SPV Application

We [the sponsor/originator/applicant/parent/shareholders] hereby confirm that we are responsible for the preparation of this checklist and supporting documents. We have delegated the completion of the checklist including the confirmations set out in (i) and (ii) below, to [service provider].

Signed: _____

Name (*in Print*): _____

Title: _____

Name of Employer: _____

Date: _____

(i) *The information set out in this checklist is correct and accurate*

(ii) *The checklist is completed in full*

Signed: _____

Name (*in Print*): _____

Title: _____

Name of Employer: _____

Date: _____

Annex I (b)

Checklist for MA SPV stage 2 applications

1.0	<u>Core details</u>	Applicant	Central Bank
1.1	Provide name and contact details of individual who will accept receipt of any correspondence from the Central Bank in respect of the MA SPV second stage application.		
1.2	Where any professional advisors are involved, provide contact details and confirmation that the Central Bank can liaise with them in respect of the application.		
1.3	Provide an organisational chart/diagram identifying all relevant parties involved in the new proposed arrangement ²³ and outline the role each party will perform in the arrangement.		
1.4	Provide information on the expected life of the arrangement ²³ .		
2.0	<u>Regulatory Supervision of Cedant</u>		
2.1	Confirm that the cedant ²³ has notified its home supervisory authority of its intention to transfer risk to a MA SPV, which is authorised by the Central Bank.		
2.2	Provide a copy of all related correspondence with the home supervisory authority ²³ .		
2.3	Provide contact name and contact details ²³ of the individual and department in the home supervisory authority who has supervisory responsibility for supervising the cedant.		
3.0	<u>Details of proposed reinsurance or similar arrangements</u>		
3.1	In relation to the new reinsurance contract or similar arrangement, clearly set out and provide ²³ :		
a)	Information about the identities and qualifications of:		
	The ceding undertaking under the relevant contract (to include most recent audited financial statements and information on its' rating or that of its group); and		

²³ Please provide this information for each arrangement forming part of a second stage assessment application. In doing so please clearly indicate which arrangements the information relates to.

- 4.1 Provide information on, including final or near final transaction documentation, regarding the issue of debt or financial instruments and risk transfer to providers of such debt or financing mechanism²³, to explain how compliance with Articles 210, 211, 320 and 321 will be maintained, including:
- a) Prospectus/Offering Circular or Private Placement Memorandum, or drafts thereof;
 - b) Rating assessment or credit rating agency's report prior to the issue of the funding instruments by the MA SPV;
 - c) Proposed investors including details and proof of their professional status/expertise/qualification to assume the risk proposed
 - d) Details relating to the potential use of financial guarantors on any of the "tranches" of notes to be issued;
 - e) With regard to this debt or financing mechanism, details of the MA SPV's liquidity strategy for the issued financial instruments, including the structure and tiering, types of positions, and note holder withdrawal rules;
 - f) Demonstrate how the investors have a subordinated claim on MA SPV assets;
 - g) Provide an overview and confirmation that investors will not have recourse to assets of the ceding undertaking;

5.0 Other information on: Ownership, legal structure, governance (including risk governance), regulatory compliance, investment management or other issues affected by the new arrangement

- 5.1 Please provide information, and supporting evidence where relevant, on;
- a) How the new arrangement²³ will ensure that the MA SPV continues to comply with the requirements of Article 318 (b) and 319;
 - b) Any changes to the system of governance, including outsourcing arrangements, internal controls or risk management system, arising from the new arrangement²³ or confirmation that the MA SPV's system of governance is still in line with the original approval received, the requirements of Articles 318

	and 322 to 324 and the expectations of the Central Bank as set out in the Guidance on the Approval and Supervision of SII SPVs;		
c)	Any changes to persons who effectively run or hold a qualifying interest in the MA SPV. Relevant Individual Questionnaires should be submitted if necessary;		
d)	Any potential conflicts of interest that may arise in respect of the interactions among the various parties into which the MA SPV will enter under the new arrangement ²³ and how that will be appropriately managed;		
e)	Any changes to the quantifiable risks of the MA SPV including to liquidity risk and strategy		
f)	In the context of the proposed new arrangement; details, including an assessment, of material residual risks, including basis risk;		
g)	Details of any off-balance sheet commitments to support the MA SPV, including guarantees or any other form of credit risk mitigation sold to or otherwise provided to the MA SPV in respect of the new arrangement ²³ ;		
h)	Any proposed changes to the investment strategy of the MA SPV;		
i)	Any proposed changes to the investment authority and guidelines for assets held in Trust (including information on any changes to persons appointed to act as trustee of the assets of the MA SPV);		
j)	Any risk implications of the changes to the MA SPV's investment strategy;		
k)	Contracts, or drafts thereof, and details of any new hedging instrument, such as interest rate swaps or currency contracts;		
l)	Updated financial projections over the expected life of the MA SPV (including operating and overhead expenses) including an explanation of any deviations or changes from the projections provided in the past, this should be provided by arrangement and in total for the MA SPV;		
m)	Any other changes to the MA SPV or the information provided to the Central Bank at stage 1 assessment phase arising as a result of the new arrangement ²³ .		

Confirmation from Applicant and the Service Provider Responsible for Preparation of the MA SPV second stage assessment application

We [the sponsor/originator/applicant/parent/shareholders] hereby confirm that we are responsible for the preparation of this checklist and supporting documents. We have delegated the completion of the checklist including the confirmations set out in (i) and (ii) below, to [service provider].

Signed: _____

Name (*in Print*): _____

Title: _____

Name of Employer: _____

Date: _____

(iii) The information set out in this checklist is correct and accurate

(iv) The checklist is completed in full

Signed: _____

Name (*in Print*): _____

Title: _____

Name of Employer: _____

Date: _____

Annex II – Annual Directors Certificate for SII SPVs

Part A

Compliance Statement

Compliance statement required under section 25 of the Central Bank Act 1997

We, the Directors of [Name of SII SPV], confirm that during the financial year ended on [date], the SII SPV:

- has materially complied with all of its obligations and requirements imposed by or under the following:

(i) the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015);

(ii) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [OJ No. L12, 17.1.2015, p. 1];

(iii) Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the co-operation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Union comply with all of its obligations and requirements imposed by or under the above provisions in the instance(s) identified in the report of material non-compliance annexed to this statement.

Or,

- has failed to materially comply with all of its obligations and requirements imposed by or under the above provisions in the instance(s) identified in the report of material non-compliance annexed to this statement.

[Delete as appropriate]

Part B

Directors' accuracy certification

Subject to permitted estimations and approximations, we the Directors of [Name of SII SPV] certify to the Central Bank of Ireland the accuracy of the information contained in the annual regular supervisory report [date report made up to] as submitted to the Central Bank of Ireland on [submission date].

Signatures:

Annex III – Qualifying Holdings

Please complete the relevant section below in relation to all holders of qualifying holdings. A holder of a qualifying holding, pursuant to Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015²⁴ means a direct or indirect holding in the SII SPV which represents 10 per cent or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking.

(Please provide completed copies of the relevant section(s) of this document if more than one shareholder.)

(Where a holder of a qualifying holding does not meet one of the legal forms provided below, e.g. individual shareholders, please discuss the ownership structure with the Central Bank in advance of submitting the application).

Shareholder – Company

Disclose name, address and registered number of Shareholder.

--

Where a shareholder is an incorporated entity, confirm that the company (i.e. shareholder) has submitted the following:

- a) Description of activities;
- b) Whether or not the company is regulated and if regulated, by which authority;
- c) Most recent audited Financial Statements if applicable. If not available most recent management accounts should be submitted;
- d) Details of proposed interaction with the SII SPV;
- e) Written confirmation that the company is the *beneficial* owner of the shares;
- f) Details of any litigation (or known circumstances which might give rise to litigation) against the company currently outstanding or that has occurred in the last five years, except cases arising in the course of normal business activities.
- g) Details of any material written complaints made against the company by its clients or its former clients in the last five years which are awaiting determination by, or have been upheld by an ombudsman.
- h) Details of any significant events or information (for example, in relation to insolvency, reconstruction, civil or criminal investigations or proceedings, or financial services regulations) which would be relevant to our consideration of the company and the SII SPV application for approval.

Shareholder – Nominee Company

Disclose name, address and registered number of Shareholder.

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²⁴ S.I. No. 485 of 2015.

- i) Legal opinion confirming the validity and efficacy of the undertaking as drafted to suit the circumstances of any particular shareholder trust;
- j) Provide details of the source of the funds under the trustee's control;
- k) Provide the name(s) of the person (s) authorised to sign on behalf of the Trust; and
- l) Provide details of any limitations on the trustee's power of investments.

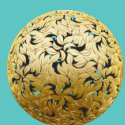
Shareholder – Partnerships

Disclose name, address and registered number of Shareholder.

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Where a shareholder is a limited liability partnership ('LLP'), confirm that the partners have submitted the following:

- a) Description of the LLP itself (including names of general and limited partners and details of respective roles);
- b) Descriptions of activities of the LLP;
- c) Whether or not the LLP is regulated and by which authority;
- d) Most recent audited Financial Statements if applicable. If not available most recent management accounts;
- e) Details of proposed interaction with the SII SPV;
- f) Written confirmation that the LLP is the beneficial owner of the shares;
- g) A copy of the partnership deed and any relevant agreement between the general and limited partners;
- h) Completed Individual Questionnaire through our Online Reporting System for each partner in the Partnership;
- i) If the partnership is not a LLP, please contact the Central Bank.



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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