



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Guidance on Applications for Approval of Basic Own Funds & Capital Contributions – 2018

## 1. Overview

1.1 “Solvency II Information Note 1 – Applications for approval of certain items specified in Article 308a of the Solvency II Directive”, “Solvency II Information Note 3 – Applications for approval of certain items specified in Article 308a of the Solvency II Directive” and “Solvency II Information Note 4 – Applications for approval of certain items specified in Article 308a of the Solvency II Directive – Undertaking Specific Parameters” have been replaced by the following:

- Guidance on Applications for Approval of Ancillary Own Funds;
- Guidance on Applications for Approval of Basic Own Funds & Capital Contributions;
- Guidance on Applications for Approval of the Matching Adjustment;
- Guidance on Applications for Approval of the Volatility Adjustment;
- Guidance on Applications for Approval of Transitional Risk Free Interest Rates;
- Guidance on Applications for Approval of Transitional Technical Provisions;
- Guidance on Applications for Approval of Undertaking Specific Parameters.

1.2 Regulation 110 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) (“Solvency II Regulations”) permits (re)insurance undertakings to assess and classify certain basic own-fund items not covered by the lists in Commission Delegated Regulation (EU) 2015/35 (“Delegated Regulation”)<sup>1</sup>, subject to prior approval by the Central Bank of Ireland (hereafter ‘Central Bank’).

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<sup>1</sup>“Item not on the lists” as per Articles 69, 72 and 76 of Commission Delegated Regulation 2015/35

## 2. Approvals Process for Applications

- 2.1 This document provides guidance in relation to the Central Bank's requirement to apply to the Central Bank to use certain basic own fund items outlined in Regulation 110. In order to ensure an efficient application process and avoid unnecessary delays in the review of those applications it is vital that undertakings submit applications that include all relevant information necessary for the assessment and decision by the Central Bank. The complete application should be submitted in electronic format to your usual supervisory contact.

### 3. Own Funds items (including Capital Contributions)

- 3.1 The Solvency II Regulations and the Delegated Regulation identify the criteria which own funds items must possess in order to be classified in one of the three Tiers (Tier 1, Tier 2 and Tier 3). The Delegated Regulation provides lists of items that fall into each of the three Tiers. Where an item is not specifically listed, i.e. represents an “item not on the lists<sup>2</sup>”, Regulation 110 requires that such an own fund item is subject to prior supervisory approval. Such approval will allow the undertaking to count the own fund item as Tier 1, Tier 2 or Tier 3 as appropriate. The Central Bank can only approve items for Tier 1, Tier 2 or Tier 3 if the own fund item meets the relevant criteria.
- 3.2 When assessing own fund items undertakings should consider all relevant elements of the Solvency II Regulations, the Delegated Regulation and the EIOPA Guidelines on Classification of Own Funds.<sup>3</sup>
- 3.3 In preparing an application undertakings should submit a written request, including a cover letter and supporting evidence, for each own fund item for which approval is sought. Each request should be approved by the Board before its submission to the Central Bank. Please refer to the EIOPA Guidelines on Classification of Own Funds for further information on how the lists of own funds items should be applied and the procedures to be followed concerning the supervisory approval of the classification of own-fund items not on the lists. A checklist based on the relevant Articles in the EIOPA Guidelines on the Classification of Own Funds is attached at Appendix 2. This includes a legal opinion on the enforceability of the contract in all relevant jurisdictions and its compliance with the relevant own funds criteria. Failure to provide all of the necessary evidence will result in the application being deemed incomplete.

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<sup>2</sup> “Item not on the lists” is defined as *an own-fund item not included in the lists set out in Articles 69, 72 and 76 of Commission Delegated Regulation 2015/35* in the EIOPA Guidelines on classification of own funds.

<sup>3</sup> As published by EIOPA on 02 February 2015.

## 4. Capital Contributions

- 4.1 To assist undertakings in ensuring that a capital contribution meets the relevant requirements to be approved as Tier 1, the Central Bank has developed a sample legal agreement that could underlie a capital contribution between a contributor and the recipient (re)insurance undertaking. Two versions of this sample agreement are attached as Appendices 2 and 3 – the first is for new agreements and the second is for retrospective agreements. These sample agreements address the features expected to be included in a legal agreement underlying a capital contribution. Where the text of the sample agreement is used by the undertaking, the legal opinion sought by the Central Bank can be limited to an opinion regarding the enforceability of the terms in all relevant jurisdictions.

## 5. Further Information

### **5.1 Application for approval of Capital Contributions Option 1 - Use the Central Bank Template for Capital Contribution and submit a Legal Opinion.**

The application should use the Central Bank Template - Sample Legal Agreement outlined at Appendix 2 or 3. The Central Bank expects that the application would be accompanied by a legal opinion that would conclude whether or not the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions.

Applicants should also note that, in accordance with paragraph 1.10 of the EIOPA Guidelines on Classification of Own Funds, the repayment or redemption of own fund items is always subject to the prior approval of the Central Bank.

### **5.2 Application for approval of Capital Contributions Option 2 - Extended Legal Opinion**

The Central Bank expects that the application would include a legal opinion that would conclude whether or not; a) the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions and b) the Capital Contribution will comply, in terms of both legal form and economic substance, with the relevant criteria in Regulations 107 and 108 and the features determining classification set out in Articles 71, 73 and 77 of the Delegated Regulation.

### **5.3 For all other Applications for Items not on the Lists**

As per Option 2 above the Central Bank expects that the application would include a legal opinion that would conclude whether or not; a) the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions and b) the own-fund item will comply, in terms of both legal form and economic substance, with the relevant criteria in Regulations 107 and 108 and the features determining classification set out in Articles 71, 73 and 77 of the Delegated Regulation.

## Appendix 1: Checklist for “items not on the list”.

- Complete all sections of this checklist.
- Insert the relevant section or page number from your application in the column marked ‘Applicant’.

	Applicant
<b>Guideline 21 - General features of the application</b>	
1.77. When submitting a request for approval in accordance with Article 79 of the Delegated Regulation the undertaking should:	
a. submit a written application for approval of each own-fund item;	
b. submit the application in English (or Irish if desired)	
c. approve the application at the Board, and submit documentary evidence of that approval;	
d. provide an application in the form of a cover letter and supporting evidence.	

<b>Guideline 22 - Cover letter</b>	
1.78. The undertaking should submit a cover letter confirming that:	
a. the undertaking believes any legal or contractual terms governing the own-fund item or any connected arrangement are unambiguous and clearly defined;	
b. taking into account likely future developments as well as circumstances applying as at the date of the application, the undertaking considers that the basic own-fund item will comply, in terms of both legal form and economic substance, with the criteria in Regulations 107 and 108 and the features determining classification set out in Articles 71, 73 and 77 of the Delegated Regulation;	

<p>c. no facts have been omitted which if known by the Central Bank could influence its decision regarding whether to approve the assessment and classification of the own-fund item.</p>	
<p>1.79. The undertaking should also list in the cover letter other applications submitted by the insurance or reinsurance undertaking, or currently foreseen within the next six months, together with the corresponding application dates.</p>	
<p>1.80. The undertaking should ensure that the cover letter is signed by persons authorised to sign on behalf of the Board.</p>	

<p><b>Guideline 23 - Supporting evidence</b></p>	
<p>1.81. The undertaking should provide a description of how the criteria in Regulations 107 and 108 and the features determining classification set out in Articles 71, 73 and 77 of the Delegated Regulation have been satisfied including how the item will contribute to the undertaking's existing capital structure, and how the item may enable the undertaking to meet its existing or future capital requirements.</p>	
<p>1.82. The undertaking should provide a description of the basic own-fund item, sufficient to allow the Central Bank to conclude on the loss absorbing capacity of the item including the contractual terms of the arrangement governing the own-fund item and the terms of any connected arrangement together with evidence that any counterparty, where relevant, has entered into the contract and any connected arrangement and evidence that the contract and any connected arrangement are legally binding and enforceable in all relevant jurisdictions.</p>	



**Appendix 2- Future or Proposed Capital Contribution Agreements**

**DATED DD/MM/201X**

**[INSERT PARTIES NAME HERE (UNDERTAKING)]**

**AND**

**[INSERT PARTIES NAME HERE (CONTRIBUTOR)]**

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**Capital Contribution Agreement**

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**THIS AGREEMENT** is dated [ ] and made between:

- (1) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE] (the **Undertaking**); and
- (2) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE] (the **Contributor**)

**RECITALS:**

- (A) The Undertaking is an [INSURANCE/ REINSURANCE] undertaking authorised by the Central Bank of Ireland (the **Central Bank**) under [INSERT RELEVANT LEGISLATION HERE].
- (B) The Contributor is [INSERT RELATIONSHIP TO THE UNDERTAKING HERE].
- (C) The Undertaking and the Contributor have agreed to enter into this capital contribution agreement (the **Agreement**) subject to the terms and conditions set out herein.

**NOW IT IS AGREED AS FOLLOWS:**

**1. CAPITAL CONTRIBUTION**

- 1.1 The Contributor hereby irrevocably confirms the payment on 201X of € [INSERT AMOUNT HERE] by way of unconditional capital contribution to be credited to the Undertaking (the **Contribution**).
- 1.2 The Undertaking and Contributor acknowledge that the Contribution is being made to enable the Undertaking to comply with its own funds obligations under the European Union (Insurance and Reinsurance) Regulations 2015 (the “Regulations”), including under Regulations 108(1), 113 and 139 of the Regulations.
- 1.3 The Contribution does not constitute a loan from the Contributor to the Undertaking; the Undertaking shall have no obligation to repay the Contribution, including on a winding-up of the Undertaking, nor shall the Contributor offer any incentive for repayment.
- 1.4 The Contribution is not being made in consideration of the grant of any rights or entitlements whatsoever, including any voting rights, profit participation rights or rights to participate in the distribution of the surplus assets of the Undertaking on a winding up.
- 1.5 The Contribution is free from any mandatory fixed charges and the Undertaking has no obligation to bear any servicing cost or transfer any economic benefit of any kind to the Contributor or any other person in return for the Contribution.
- 1.6 The Contribution is free from encumbrances (within the meaning of the *Guidelines on classification of own funds*, as published by EIOPA on 02 February 2015) and is not

connected with any other transaction, which when considered with the Contribution, could result in the Contribution not complying with Regulation 108(1) of the Regulations.

- 1.7 The Undertaking shall not distribute the Contribution by way of dividend, or in any other way or cause the amount of the Contribution to be reduced, without the prior written approval of the Central Bank.
  
2. If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
  
3. This Agreement constitutes the entire agreement as to the making of the Contribution and supersedes and extinguishes all other agreements, promises, assurances, warranties, representations and understandings, whether written or oral, in relation to it. Any other terms existing at the date hereof and not comprised in this Agreement shall be of no force or effect.
  
4. Any amendments to this Agreement made or purported to be made without the consent of the Central Bank shall be void.
  
5. The Undertaking and the Contributor confirm they have the requisite powers and objects to fulfil their obligations under this Agreement.
  
6. This Agreement shall be governed by, and construed in accordance with, the law of the Republic of Ireland.
  
7. **COMPLETION**
- 7.1 On Completion of the Contribution the Undertaking shall:
  - (a) provide the Contributor with an original of the Agreement duly executed by both Parties;
  - (b) provide the Central Bank with a copy of an original of the Agreement duly executed;
  - (c) provide the Central Bank with a copy, certified by an authorised signatory of the Undertaking to be a true copy, of appropriate documentary evidence indicating that the Contribution has been received.

This Agreement has been entered into and delivered as a deed on the date stated at the beginning of this Agreement.

**PRESENT** when the common seal of<sup>2</sup>

**[THE UNDERTAKING]**

was affixed to this deed and this deed was delivered

\_\_\_\_\_ (Director)      \_\_\_\_\_ (Director/Secretary)

**PRESENT** when the common seal of

**[THE CONTRIBUTOR]**

was affixed to this deed and this deed was delivered

\_\_\_\_\_ (Director)      \_\_\_\_\_ (Director/Secretary)

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<sup>2</sup>To be amended to reflect correct execution clauses of entities executing the Agreement

**Appendix 3- Retrospective Capital Contributions Agreement**

**DATED DD/MM/201X**

**[INSERT PARTIES NAME HERE (UNDERTAKING)]**

**AND**

**[INSERT PARTIES NAME HERE (CONTRIBUTOR)]**

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**Capital Contribution Agreement**

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**THIS AGREEMENT** is dated [ ] and made between:

- (1) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE] (the **Undertaking**); and
- (2) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE] (the **Contributor**)

**RECITALS:**

- (A) The Undertaking is an [INSURANCE/ REINSURANCE] undertaking authorised by the Central Bank of Ireland (the **Central Bank**) under [INSERT RELEVANT LEGISLATION HERE].
- (B) The Contributor is [INSERT RELATIONSHIP TO THE UNDERTAKING HERE].
- (C) The Contributor made a capital contribution of € [ ] to the Undertaking on [DATE].
- (D) The Undertaking and the Contributor have agreed that the terms and conditions set out in this capital contribution agreement (the **Agreement**) apply exclusively to that capital contribution.

**NOW IT IS AGREED AS FOLLOWS:**

**1. CAPITAL CONTRIBUTION**

- 1.1 The Contributor hereby irrevocably confirms the payment on [INSERT RELEVANT DATE HERE] of € [INSERT AMOUNT HERE] constitutes an unconditional capital contribution to be credited to the Undertaking (the **Contribution**).
- 1.2 The Undertaking and Contributor acknowledge that the Contribution is to enable the Undertaking to comply with its own funds obligations under the European Union (Insurance and Reinsurance) Regulations 2015<sup>1</sup> (the “Regulations”), including under Regulations 108(1), 113 and 139.
- 1.3 The Contribution does not constitute a loan from the Contributor to the Undertaking; the Undertaking has no obligation to repay the Contribution, including on a winding-up of the Undertaking, nor shall the Contributor offer any incentive for repayment.
- 1.4 The Contribution was not made in consideration of the grant of any rights or entitlements whatsoever, including any voting rights, profit participation rights or rights to participate in the distribution of the surplus assets of the Undertaking on a winding up.
- 1.5 The Contribution is free from any mandatory fixed charges and the Undertaking has no obligation to bear any servicing cost or transfer any economic benefit of any kind to the Contributor or any other person in return for the Contribution.

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<sup>1</sup> Statutory Instrument 485 of 2015

- 1.6 The Contribution is free from encumbrances (within the meaning of the Guidelines on classification of own funds, as published by EIOPA on 02 February 2015) and is not connected with any other transaction, which when considered with the Contribution, could result in the Contribution not complying with Regulation 108(1) of the Regulations.
- 1.7 The Undertaking shall not distribute the Contribution by way of dividend, or in any other way or cause the amount of the Contribution to be reduced, without the prior written approval of the Central Bank.
2. If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
3. This Agreement constitutes the entire agreement governing the Contribution and supersedes and extinguishes all other agreements, promises, assurances, warranties, representations and understandings, whether written or oral, in relation to it. Any other terms existing at the date hereof and not comprised in this Agreement shall be of no force or effect.
4. Any amendments to this Agreement made or purported to be made without the consent of the Central Bank shall be void.
5. The Undertaking and the Contributor confirm they have the requisite powers and objects to fulfil their obligations under this Agreement.
6. This Agreement shall be governed by, and construed in accordance with, the law of the Republic of Ireland.
7. **COMPLETION**
- 7.1 On execution of this Agreement the Undertaking shall:
- (a) provide the Contributor with an original of the Agreement duly executed by both Parties;
  - (b) provide the Central Bank with a copy of an original of the Agreement duly executed;
  - (c) provide the Central Bank with a copy, certified by an authorised signatory of the Undertaking to be a true copy, of appropriate documentary evidence indicating that the Contribution has been received.

This Agreement has been entered into and delivered as a deed on the date stated at the beginning of this Agreement.

**PRESENT** when the common seal of<sup>2</sup>

**[THE UNDERTAKING]**

was affixed to this deed and this deed was delivered

\_\_\_\_\_ (Director) \_\_\_\_\_ (Director/Secretary)

**PRESENT** when the common seal of

**[THE CONTRIBUTOR]**

was affixed to this deed and this deed was delivered

\_\_\_\_\_ (Director) \_\_\_\_\_ (Director/Secretary)

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<sup>2</sup> To be amended to reflect correct execution clauses of entities executing the Agreement



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