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) (Text with EEA relevance)

TITLE I

[[X1]VALUATION AND RISK-BASED CAPITAL REQUIREMENTS (PILLAR I), ENHANCED GOVERNANCE (PILLAR II) AND INCREASED TRANSPARENCY (PILLAR III)]

CHAPTER III

RULES RELATING TO TECHNICAL PROVISIONS

SECTION 3

Methodologies to calculate technical provisions

Subsection 4

Risk margin

Article 37

Calculation of the risk margin

1 The risk margin for the whole portfolio of insurance and reinsurance obligations shall be calculated using the following formula[F1]:

$$RM = CoC \times \sum_{t \geq 0} \frac{SCR(t) \times \max(\lambda^{t}, \lambda_{floor})}{(1+r(t+1))^{t+1}}$$

where:

(a) *CoC* denotes the Cost-of-Capital rate;

(b) the sum covers all integers including zero;

(c) SCR(t) denotes the Solvency Capital Requirement referred to in Article 38(2) after t years;

(d) r(t + 1) denotes the basic risk-free interest rate for the maturity of t + 1 years.

(e) [[F2]“λ” denotes the risk tapering factor, and equals—

(i) 0.9 for life insurance and reinsurance obligations, and

(ii) 1.0 for non-life insurance and reinsurance obligations;

(f) "

λt

" denotes the risk tapering factor to the power of t years;

(g) "

$\lambda floor$

" denotes the floor of the risk tapering factor, and equals 0.25.**]**

The basic risk-free interest rate r(t + 1) shall be chosen in accordance with the currency used for the financial statements of the insurance and reinsurance undertaking.

2 Where insurance and reinsurance undertakings calculate their Solvency Capital Requirement using an approved internal model and determine that the model is appropriate to calculate the Solvency Capital Requirement referred to in Article 38(2) for each point in time over the lifetime of the insurance and reinsurance obligations, the insurance and reinsurance undertakings shall use the internal model to calculate the amounts $SCR(t)$ referred to in paragraph 1.

3 Insurance and reinsurance undertakings shall allocate the risk margin for the whole portfolio of insurance and reinsurance obligations to the lines of business referred to in Article 80 of Directive 2009/138/EC. The allocation shall adequately reflect the contributions of the lines of business to the Solvency Capital Requirement referred to in Article 38(2) over the lifetime of the whole portfolio of insurance and reinsurance obligations.

Textual Amendments

F1 Art. 37(1) formula substituted (31.12.2023) by The Insurance and Reinsurance Undertakings (Prudential Requirements) (Risk Margin) Regulations 2023 (S.I. 2023/1346), regs. 1(1), **2(2)(a)**

F2 Art. 37(1)(e)-(g) inserted (31.12.2023) by The Insurance and Reinsurance Undertakings (Prudential Requirements) (Risk Margin) Regulations 2023 (S.I. 2023/1346), regs. 1(1), **2(2)(b)**

Article 38

Reference undertaking

1 The calculation of the risk margin shall be based on all of the following assumptions:

a the whole portfolio of insurance and reinsurance obligations of the insurance or reinsurance undertaking that calculates the risk margin (the original undertaking) is taken over by another insurance or reinsurance undertaking (the reference undertaking);

b notwithstanding point (a), where the original undertaking simultaneously pursues both life and non-life insurance activities according to Article 73(5) of Directive 2009/138/EC, the portfolio of insurance obligations relating to life insurance activities and life reinsurance obligations and the portfolio of insurance obligations relating to non-life insurance activities and non-life reinsurance obligations are taken over separately by two different reference undertakings;

c the transfer of insurance and reinsurance obligations includes any reinsurance contracts and arrangements with special purpose vehicles relating to these obligations;

d the reference undertaking does not have any insurance or reinsurance obligations or own funds before the transfer takes place;

e after the transfer, the reference undertaking does not assume any new insurance or reinsurance obligations;
f after the transfer, the reference undertaking raises eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof;
g after the transfer, the reference undertaking has assets which amount to the sum of its Solvency Capital Requirement and of the technical provisions net of the amounts recoverable from reinsurance contracts and special purpose vehicles;
h the assets are selected in such a way that they minimise the Solvency Capital Requirement for market risk that the reference undertaking is exposed to;
i the Solvency Capital Requirement of the reference undertaking captures all of the following risks:

(i) underwriting risk with respect to the transferred business,

(ii) where it is material, the market risk referred to in point (h), other than interest rate risk,

(iii) credit risk with respect to reinsurance contracts, arrangements with special purpose vehicles, intermediaries, policyholders and any other material exposures which are closely related to the insurance and reinsurance obligations,

(iv) operational risk;

j the loss-absorbing capacity of technical provisions, referred to in Article 108 of Directive 2009/138/EC, in the reference undertaking corresponds for each risk to the loss-absorbing capacity of technical provisions in the original undertaking;
k there is no loss-absorbing capacity of deferred taxes as referred to in Article 108 of Directive 2009/138/EC for the reference undertaking;
l the reference undertaking will, subject to points (e) and (f), adopt future management actions that are consistent with the assumed future management actions, as referred to in Article 23, of the original undertaking.

2 Over the lifetime of the insurance and reinsurance obligations, the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations referred to in the first subparagraph of Article 77(5) of Directive 2009/138/EC shall be assumed to be equal to the Solvency Capital Requirement of the reference undertaking under the assumptions set out in paragraph 1.

3 For the purposes of point (i) of paragraph 1, a risk shall be considered to be material where its impact on the calculation of the risk margin could influence the decision-making or the judgment of the users of that information, including supervisory authorities.

Article 39

Cost-of-Capital rate

The Cost-of-Capital rate referred to in Article 77(5) of Directive 2009/138/EC shall be assumed to be equal to **[**[F3]4%**]**.

Textual Amendments

F3 Word in Art. 39 substituted (31.12.2023) by The Insurance and Reinsurance Undertakings (Prudential Requirements) (Risk Margin) Regulations 2023 (S.I. 2023/1346), regs. 1(1), **2(3)**

Status:
Point in time view as at 31/12/2023.

Changes to legislation:
Commission Delegated Regulation (EU) 2015/35, Subsection 4 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.