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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)

COMMISSION IMPLEMENTING REGULATION (EU) 2015/462

of 19 March 2015

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[1], and in particular Article 211(2)(a) and (b) thereof,

Whereas:

(1) Special purpose vehicles require supervisory approval to be established prior to assuming risks from insurance or reinsurance undertakings. The conditions and procedures to be followed for granting and withdrawing this approval, including documentation requirements, are regulated by Directive 2009/138/EC and should be complemented by this Regulation.

(2) Where a special purpose vehicle assumes risks from more than one insurance or reinsurance undertaking, the special purpose vehicle should maintain assets equal to or exceeding its aggregate maximum risk exposure taking into account each individual contractual obligation. When granting supervisory approval, the supervisory authority should assess whether this obligation is being met and consider each individual contractual arrangement and risk transfer.

(3) It is important to set procedures for the cooperation and exchange of information between supervisory authorities, where the special purpose vehicle is established in a Member State which is not the Member State where the insurance or reinsurance undertaking, from which it assumes risk, is established. The cooperation and exchange of information between those supervisory authorities is particularly important during

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the process of the supervisory approval of the special purpose vehicle. Also, if there are material changes that potentially affect the special purpose vehicle's compliance with the requirements of Article 211 of Directive 2009/138/EC and when the authorisation is withdrawn or lapses, the cooperation and exchange of information between those supervisory authorities is necessary to ensure effective and efficient supervision.

(4) The supervisory reporting requirements, which are set out in Article 325 of Commission Delegated Regulation (EU) 2015/35[(2)], should enable the supervisory authorities of the special purpose vehicles to assess continued compliance with the relevant requirements. Those requirements should be complemented by the templates and formats set out in this Regulation.

(5) For a clearer understanding of the appropriate technical rules to be laid down, it is necessary to define the term multi-arrangement special purpose vehicle.

(6) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority (EIOPA) to the Commission.

(7) EIOPA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(3)].

(8) In order to enhance legal certainty about the supervisory regime during the phasing-in period provided for in Article 308a of Directive 2009/138/EC, which will start on 1 April 2015, it is important to ensure that this Regulation enters into force as soon as possible, on the day after that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out:

(a) the procedures to be followed for granting and withdrawing supervisory approval to establish special purpose vehicles;

(b) the procedures to be followed for cooperation and exchange of information between the supervisory authority of the Member State in which the special purpose vehicle is established and the supervisory authority of the Member State in which the insurance or reinsurance undertaking transferring risk is established;

(c) the formats and templates to be used for the annual reporting of information by the special purpose vehicle.

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Article 2

Definition

For the purposes of this Regulation, 'multi-arrangement special purpose vehicle' means a special purpose vehicle which assumes risks under more than one separate contractual arrangement from one or more insurance or reinsurance undertakings.

Article 3

Supervisory approval to establish special purpose vehicles

The special purpose vehicle shall seek authorisation from the supervisory authority of the Member State to establish its head office within the territory of that Member State.

Article 4

Decision of the supervisory authority

1 The supervisory authority of the Member State in which the special purpose vehicle is established or is to be established shall decide on an application for authorisation within six months of the date of its receipt.

2 In its decision to grant supervisory approval the supervisory authority shall state the activities for which the special purpose vehicle is authorised and, where relevant, any terms and conditions relating to those activities.

3 Any decision to refuse an authorisation shall state full reasons and shall be communicated to the applicant by the supervisory authority.

Article 5

Demonstration and documentation requirements

When applying for supervisory approval to establish, the special purpose vehicle shall demonstrate that the requirements set out in Articles 318 to 324, 326 and 327 of Delegated Regulation (EU) 2015/35 are met and that the special purpose vehicle is capable of meeting the requirements of Article 325 of Delegated Regulation (EU) 2015/35 by providing documentary evidence of that in its application. When submitting an application for authorisation, the applicant shall submit, at least, the supporting documentation as set out in Annex I. The documentation shall cover the structure of the special purpose vehicle, the risk to be assumed and the funding of that special purpose vehicle.

Article 6

Withdrawal of authorisation

1 The supervisory authority granting supervisory approval to establish the special purpose vehicle may withdraw the authorisation of that special purpose vehicle where:

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a the special purpose vehicle no longer fulfils the original conditions under which the approval to establish that special purpose vehicle was granted;

b the special purpose vehicle fails seriously in its obligations under the regulations to which it is subject.

2 In the case referred to in paragraph (1)(b) above, the supervisory authority shall consider the special purpose vehicle to have committed a serious failure where it does not comply with the requirement to remain fully funded and the supervisory authority considers that the special purpose vehicle cannot restore its compliance within a reasonable timeframe.

3 Any decision to withdraw authorisation shall state the full reasons and shall be communicated to the special purpose vehicle without delay.

Article 7

Multi-arrangement special purpose vehicle

1 When applying for supervisory approval to establish a multi-arrangement special purpose vehicle, the applicant shall additionally demonstrate to the satisfaction of its supervisory authority that its solvency cannot be adversely affected by the winding-up proceedings of any one of the insurance or reinsurance undertakings transferring risks and that the multi-arrangement special purpose vehicle can maintain the solvency requirement at all times.

2 When demonstrating that the multi-arrangement special purpose vehicle's solvency cannot be adversely affected by the winding-up proceedings of any one of the insurance or reinsurance undertakings transferring risk, the multi-arrangement special purpose vehicle shall provide sufficient supporting evidence to allow its supervisory authority to assess the multi-arrangement special purpose vehicle's overall aggregate maximum risk exposure and the aggregate maximum risk exposure of each individual contractual arrangement relating to the transfer of risk from an insurance or reinsurance undertaking.

3 When applying for supervisory approval to establish a multi-arrangement special purpose vehicle, the applicant shall provide sufficient supporting evidence that it satisfies the conditions set out in Articles 319 to 321 and 326 of the Implementing Measures taking into account each individual contractual arrangement in order to determine whether the multi-arrangement special purpose vehicle complies with the solvency requirements.

4 Where the applicant is not able to provide sufficient supporting evidence in line with the provisions of paragraphs 1 to 3, the supervisory authority shall refuse the application for the establishment of the multi-arrangement special purpose vehicle.

Article 8

Ongoing cooperation between supervisory authorities

1 Where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised, the supervisory authorities concerned shall cooperate on an ongoing basis.

2 The supervisory authorities shall exchange information relevant to the exercise of supervisory tasks, including information on any planned supervisory actions against the special purpose vehicle or the insurance and reinsurance undertakings transferring risk where this may affect the supervision of that special purpose vehicle or the insurance and

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reinsurance undertakings transferring risk. In such circumstances, the supervisory authorities shall communicate without delay.

Article 9

Prior consultation before granting an authorisation

Prior to granting authorisation, the supervisory authority from which supervisory approval to establish a special purpose vehicle is sought shall consult with the supervisory authority of the Member State in which the insurance or reinsurance undertaking transferring risk is established.

Article 10

Communication of changes

The special purpose vehicle's supervisory authority shall communicate without delay any relevant information received from a special purpose vehicle according to Article 325(5) of Delegated Regulation (EU) 2015/35 relating to any changes that could affect the special purpose vehicle's compliance with the requirements set out in Articles 318 to 324, 326 and 327 of Delegated Regulation (EU) 2015/35 to the supervisory authority of the insurance or reinsurance undertaking transferring risk to that special purpose vehicle. The supervisory authority shall communicate without delay the special purpose vehicle's breach of solvency requirements.

Article 11

Communication of withdrawal of authorisation

In the event of withdrawal of a special purpose vehicle's authorisation, that special purpose vehicle's supervisory authority shall notify the supervisory authority of the insurance or reinsurance undertaking transferring risk to that special purpose vehicle without delay.

Article 12

Communication of the annual report

The special purpose vehicle's supervisory authority shall share the annual report of the special purpose vehicle, submitted according to Article 325(3) and (4) of Delegated Regulation (EU) 2015/35, with the supervisory authority of the insurance or reinsurance undertaking transferring risk to that special purpose vehicle without delay. In case of a multi-arrangement special purpose vehicle, the multi-arrangement special purpose vehicle's supervisory authority may share with the supervisory authorities only those parts of the report that relate to the insurance and reinsurance undertaking established in the Member State of those supervisory authorities.