

NEW PRA PROCESS FOR INSURANCE OWN FUNDS PERMISSIONS

SLAUGHTER AND MAY BRIEFING

1. INTRODUCTION

- 1.1 The eligibility, issuance and repayment, redemption or repurchase of own funds instruments of or by UK insurance groups will, as of 31 December 2024, be governed by a new regulatory regime. As part of the transposition of the corpus of EU financial regulatory law into domestic regulation, this new regime will be housed in the rules and guidance of the Prudential Regulation Authority (PRA) as set out in its policy statement PS15/24 (**PS15/24**; [link here](#)).
- 1.2 The new regime largely mirrors the existing regime, which is mostly set out in the assimilated Solvency II Delegated Regulation.¹ The eligibility criteria for own funds instruments, for instance, are unchanged in substance. The new regime will therefore not require any substantive changes to the terms and conditions of new own funds issuances (albeit that firms may wish to consider making minor drafting tweaks, e.g. to update statutory / regulatory references). The pre-issuance notification (or PIN) process also remains the same.
- 1.3 However, the process for applying for PRA permission for certain actions relating to own funds instruments has been updated and formalised. We summarise this new process below, with which we understand the PRA, as a matter of practice, is already expecting firms to comply.

2. PRA OWN FUNDS PERMISSIONS

- 2.1 Under both the current and new regimes, firms must apply to the PRA for prior permission before:
 - (a) redeeming an own funds item;
 - (b) counting an item of ancillary own funds as part of its own funds;
 - (c) including an item not on the enumerated list of own funds items as own funds;
 - (d) redeeming a restricted Tier 1 own funds item between five and ten years after issuance;
 - (e) redeeming an own funds item early on the basis of a change in its regulatory classification or tax treatment;
 - (f) waiving the contractual suspension of redemption, or cancellation or deferral of distributions, where the firm is not in compliance with its solvency capital requirement (SCR); or
 - (g) allowing the principal loss absorbency mechanism not to trigger on the occurrence of a contractual solvency-related trigger event.
- 2.2 Currently, these permissions are largely hardwired into the own funds eligibility criteria. For instance, the requirement to obtain PRA approval for the repayment, redemption, repurchase or buyback of Tier 1 own funds items is presently reflected in Article 71(1)(h) of the assimilated Solvency II Delegated Regulation, which provides

¹ Regulation 2015/35/EU as it forms part of assimilated law.

that an item will only qualify as Tier 1 own funds if its repayment, redemption, repurchase or buyback “*is subject to prior supervisory approval*”. The nature of this “*supervisory approval*” process is not fleshed out in legislation or PRA rules, albeit European-level guidelines (with which UK firms are still expected to comply) provide some guidance.²

- 2.3 This regime for own funds permissions, with its lack of a standardised and transparent application process, has led to the unsatisfactory result that the PRA adopts different approaches for different firms. In the consultation paper that preceded PS15/24, the PRA recognised this concern and explained that it wished to introduce the new regime to “*ensure there is consistency and transparency in the process for obtaining [own funds] permissions*”.³

3. THE NEW OWN FUNDS PERMISSION PROCESS

- 3.1 Under the PRA’s new rules and new Statement of Policy titled “*Solvency II: The PRA’s approach to insurance own funds permissions*” (dated November 2024; link [here](#)), each of the own funds permissions outlined in section 2 above will be expressly applied for, and granted, pursuant to section 138BA of the Financial Services and Markets Act 2000 (FSMA).⁴ In order to apply for the relevant permission, a firm will need to submit to the PRA:

- (a) a section 138BA FSMA application form (which can be found [here](#) or on [this webpage](#)); and
- (b) the supporting information relating to the specific own funds permission for which it is applying as specified in the Statement of Policy (where relevant, as part of, or as an enclosure to, the relevant supporting information form, which can be found on [this webpage](#)).

- 3.2 The supporting information required under the new application process is intended to mirror the PRA’s current practice. The substance of the content of the applications for own funds permissions is therefore not changing;⁵ for instance, firms will still need to outline the impact of a repayment, redemption, repurchase or buyback of an own funds item on their overall solvency position.

- 3.3 The Statement of Policy outlines the timelines for the applications, which are also the same as the PRA’s existing practice. For example, an application for the repayment, redemption, repurchase or buyback of an own funds item should still be submitted at least three months prior to the earlier of the required contractual notice to holders of the item or the proposed effective date.

4. CONCLUSION

While the new regime for applying for PRA own funds permissions is intended to replicate the existing regime, firms should take note of, and comply with, the new application formalities to ensure timelines for undertaking capital management actions are not unnecessarily delayed.

² European Insurance and Occupational Pensions Authority Guidelines on classification of own funds (EIOPA-BoS-14/168) April 2015, read with the Bank of England and PRA Statement of Policy titled “*Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK’s withdrawal from the EU*” (November 2022, updating August 2022).

³ Paragraph 7.13, PRA Consultation Paper CP5/24.

⁴ This section of FSMA, which provides the PRA the discretionary power to disapply or modify certain of its rules, was introduced by the Financial Services and Markets Act 2023.

⁵ Cf. paragraph 7.11 of CP5/24.

CONTACTS



David Shone
PARTNER



Caroline Phillips
PARTNER



Guy O'Keefe
PARTNER



Kevin Howes
PARTNER



James Costi
SENIOR COUNSEL



Ben Goldstein
ASSOCIATE