

# Senior Insurance Managers Regime

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## Introduction

The new UK Senior Insurance Managers Regime came fully into force on March 7 2016. This update provides an overview of the new regulatory framework and outlines some aspects of the regime that could be subject to further changes.

The Senior Insurance Managers Regime amends and replaces the Prudential Regulatory Authority's (PRA) Approved Persons Regime, and implements certain measures under Solvency II which relate to governance and the fitness and propriety of relevant individuals. The Financial Conduct Authority (FCA) has retained its own Approved Persons Regime, and this regime has been amended to complement the Senior Insurance Managers Regime.

## Scope of regime

The new regime applies to (re)insurers and UK branches of third-country undertakings within the scope of Solvency II, as well as to the Society of Lloyd's and managing agents and insurance special purpose vehicles.

The aim of the Senior Insurance Managers Regime is to ensure that senior individuals who are effectively running insurers, or who have responsibility for other key functions at those firms, behave with integrity, honesty and skill. These key individuals are responsible and accountable for the sound and prudent management of their firms. In order to achieve this, the Senior Insurance Managers Regime covers:

- senior insurance managers who are subject to pre-approval by the PRA for a controlled function; and
- "key function holders" who are senior persons effectively running an insurer or who are responsible for key functions, as defined by the insurer.

Under the new regime, the list of individuals who are subject to PRA pre-approval for a controlled function (now a senior insurance management function) has been narrowed to those who perform a critical role within an organisation. It also identifies the individuals who will be held responsible for ensuring the ongoing safety and soundness of their firms. The list of senior insurance management function holders includes the chief executive officer, chair, chief finance officer, chief risk officer, head of internal audit, chief actuary, chief underwriting officer, group entity senior insurance manager and third-country branch manager. Of these senior insurance management function

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holders, all firms must ensure that they have, as a minimum, a chief executive officer, chief finance officer and chair; it is not mandatory for a firm to fill the other senior insurance management functions.

In addition, within the FCA's remit of pre-approval are those individuals who have an executive function or carry out certain other controlled functions, and who are not otherwise pre-approved by the PRA. These individuals fall under the scope of the FCA's own Approved Persons Regime and the functions that they undertake are significant influence functions.

### **Allocation of responsibilities**

Firms are now required to allocate certain prescribed core responsibilities to one or more individuals who have been approved as a senior insurance management function holder. Such core responsibilities include:

- ensuring that the firm has complied with the obligation to satisfy itself that persons performing a key function are fit and proper;
- production and integrity of the firm's financial information and regulatory reporting; and
- allocation and maintenance of the firm's capital and liquidity.

This approach is designed to ensure that responsibility for certain significant activities relating to effective governance and the ongoing safety and soundness of a firm are allocated to a designated senior person.

### **Governance map and scope of responsibilities**

Under the new regime, firms are required to compile and maintain a 'governance map' containing the names and positions of those who effectively run the firm, as well as those with responsibility for a key function. This document or series of documents is also intended to record the allocation of significant management responsibilities and reporting lines for each of these senior individuals within the firm and group. The governance map is a live record and must be updated at least quarterly and in the event of a significant change to:

- the firm's governance structure;
- the significant responsibilities allocated to a key function holder; or
- the reporting lines of a key function holder.

The FCA also requires Solvency II firms to maintain a governance map that captures all significant influence function holders.

In addition to a governance map, firms must also keep and maintain up-to-date records of the scope of responsibilities that firms allocate to individuals under the new regime. Like the governance map, the scope of responsibilities record must be updated when changes are made. Each version of both the governance map and the scope of responsibilities record must be retained for 10 years from the date on which it was superseded by a more up-to-date document and must be provided to the PRA or the FCA on request.

By September 7 2016 Solvency II insurers must have:

- prepared and submitted scope of responsibilities forms to the PRA for grandfathered senior insurance management functions;
- prepared scope of responsibilities forms for grandfathered significant influence functions and made these available to the FCA; and
- submitted a notification form for each transitional key function holder who has neither sought PRA approval nor grandfathered to a controlled function.

### **Conduct standards**

The Senior Insurance Managers Regime sets out new conduct standards in the [PRA Rulebook](#) which replace the old standards under the [Statements of Principle and Code of Practice for Approved](#)

**Persons.** The new conduct standards must be complied with on an ongoing basis. The first three conduct standards apply to senior insurance management function holders, key function holders and any person performing a key function, and require all such individuals to:

- act with integrity;
- act with due skill, care and diligence; and
- be open and cooperative with the [FCA](#), the [PRA](#) and other regulators.

Senior insurance management function holders and key function holders must also observe a further five conduct standards. These are:

- taking reasonable steps to ensure that the business of the [firm](#) for which they are responsible is controlled effectively;
- taking reasonable steps to ensure that the business of the firm for which they are responsible complies with the relevant requirements and standards of the [regulatory system](#);
- taking reasonable steps to ensure that any delegation of their responsibilities is to an appropriate [person](#) and that they oversee the discharge of the delegated responsibility effectively;
- disclosing appropriately any information of which the FCA or the PRA would reasonably expect to have notice; and
- when exercising their responsibilities, paying due regard to the interests of current and potential future [policy holders](#) in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits.

For FCA-approved persons, the FCA has retained the requirements in the Statements of Principle and Code of Practice for Approved Persons and built on them with the two new additions, requiring those individuals to:

- pay due regard to the interests of customers and treat them fairly (Rule 4); and
- take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively (SC3).

The FCA's conduct rules also apply to all PRA senior insurance management function holders.

### **Non-executive directors**

The Senior Insurance Managers Regime extends to the following non-executive directors: the chair, senior independent director and chairs of the risk committee, audit committee and remuneration committee, all of whom must be pre-approved by the PRA. The PRA recognises that non-executive directors in the scope of the Senior Insurance Managers Regime do not manage a firm's business in the same way an executive senior insurance management function holder does, and therefore the responsibilities for which they are accountable are limited. The PRA has restricted the accountability of PRA-approved non-executive directors to those activities for which they are responsible. Non-executive directors within the scope of the Senior Insurance Managers Regime are expected to take on certain responsibilities, which are non-executive in nature and are either inherent to or derive from their chair or senior independent director roles.

Other non-executive directors, termed 'notified non-executive directors' (ie, those not subject to PRA approval) will still need to be assessed by the firm as being fit and proper and will be expected to observe certain conduct standards.

### **Fit and proper assessment**

Firms must ensure that all persons who perform key functions are at all times fit and proper. This rule applies to senior insurance management function holders and key function holders (as well as others who perform key functions but are not responsible for them).

In deciding whether a person is fit and proper, a firm must be satisfied that the candidate:

- has the appropriate personal characteristics (including being of good repute and integrity);
- possesses the level of competence, knowledge and experience;
- has the qualifications; and
- has undergone or is undergoing all training,

required to enable him or her to perform the role effectively and in accordance with the relevant regulatory requirements, and to enable the sound and prudent management of the firm.

The assessment of senior insurance management function holders and notified non-executive directors in relation to fitness and propriety is stringent. For example, firms must obtain the consent of prospective senior insurance management function holders and notified non-executive directors to request a criminal records check, and firms must obtain references for these individuals from current and previous employers for the last five years. In addition, regulatory pre-approval may involve prospective senior insurance management function holders being interviewed by the PRA. In contrast, key function holders will not require regulatory pre-approval. However, there is a requirement for firms to notify the PRA after they have assessed a key function holder as fit and proper. The PRA will then assess the firm's conclusion on an "*ex-post* basis" (ie, after the key function holder's employment has commenced).

Under the new regime, where a firm makes a request to another firm for a regulatory reference (ie, employment references that pass between firms when individuals move) in respect of a potential senior insurance management function holder, key function holder, non-executive director or a notified non-executive director, the firm subject to the request must, as soon as reasonably practicable, provide the reference and disclose all the information it believes to be relevant to the assessment of whether that individual is fit and proper to the requesting firm. A second tranche of rules in relation to regulatory references, covering areas where consultation feedback is still under consideration, is likely to be issued later this year.

## **Enforcement**

Under the Senior Insurance Managers Regime, the PRA has powers over senior insurance management function holders which enable it, among other penalties, to:

- censure an individual publicly;
- withdraw senior insurance management function approval from an individual; and
- prohibit individuals from holding senior insurance management functions in the future.

These disciplinary powers can be used where individuals fail to comply with the PRA's conduct rules or are knowingly involved in contravening a requirement imposed by the PRA on their firm. In assessing whether to take disciplinary action, the PRA will consider factors such as:

- the impact of the individual's behaviour on the PRA's advancement of its objectives;
- whether the disciplinary action will deter the individual from committing future breaches; and
- the individual's behaviour towards the PRA and the appropriateness of the individual's actions in response to the concerns raised.

## **What's next?**

In October 2015 the Treasury announced its intention to extend the Senior Managers and Certification Regime, which currently applies to the banking sector, to all sectors of the financial services industry, including insurers, during 2018. The key features of the extended Senior Managers and Certification Regime are:

- an approval regime focused on senior management with requirements on firms to submit robust documentation on the scope of these individuals' responsibilities;
- a statutory requirement for senior managers to take reasonable steps to prevent regulatory breaches falling within their areas of responsibility;
- a requirement for firms to certify individuals who perform a function that could cause significant harm to the firm or its customers as fit and proper, both on hiring the individuals and then again annually; and

- a power for the regulators to apply enforceable rules of conduct to any individual that could impact their statutory objectives.

The Treasury recognise that the Senior Insurance Managers Regime will "pave the way for the application of the [Senior Managers and Certification Regime] to insurers" and that the new insurance regime already incorporates some of the substantive ideas and principles of the Senior Managers and Certification Regime. However, it is clear that some of the key features outlined above will be new to insurers and are likely to result in additional costs – for example, in complying with the certification requirements. As part of good corporate governance, firms should consider the impact of these measures on their business and start preparing for further changes.

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