

EXTENSION OF THE SENIOR MANAGERS AND CERTIFICATION REGIMES TO THE INSURANCE SECTOR

On 26 July 2017 the FCA and PRA published their proposals to extend the senior managers and certification regimes (SMCR) to all sectors of the insurance and reinsurance industry regulated by the FCA and/or PRA. Please refer to:

[Individual accountability: extending the SM&CR to insurers \(FCA CP17/26\).](#)

[Strengthening individual accountability in insurance: extension of SM&CR to insurers \(PRA CP14/17\).](#)

Going forward virtually everyone in the insurance sector will be subject to increased regulatory requirements and expectations as to how they conduct themselves. For insurers currently subject to the PRA's Senior Insurance Managers Regime (SIMR) and the FCA's Approved Persons Regime (APR), the proposed certification requirements and wider application of conduct rules are likely to have a significant impact.

A full scope SMCR regime will apply to Solvency II firms and large Non Directive Firms (NDFs) and a streamlined regime will apply to small NDF's, small run off vehicles and Insurance Special Purpose Vehicles (ISPV's). All insurers will be subject to the Certification regime, Fit and Proper test obligations and Conduct Rules requirements.

This briefing will help firms and their employees understand what they need to do to ensure a smooth transition to the new regime which is expected to come into effect from 2018, (probably on a transitional basis). In many cases, firms may have to make substantial changes to training, employment documents and compliance policies and procedures and senior individuals will need to understand the possible impact on them personally.

Key features of the Insurance SMCR Regime

Full scope and streamlined regimes

- Regulatory pre-approval for senior managers
- Statements of responsibility for senior managers
- Personal accountability/duty of responsibility for senior managers
- Annual firm certification of individuals in 'Certified Function' roles
- A requirement to obtain regulatory references for senior managers,

Key issues

- Key features of the Insurance SMCR Regime
- Is my firm affected?
- What are the key elements of the Insurance SMCR?
- Who will be a Senior Manager, who will be a Certified Person and who will be covered by the new Conduct Rules?
- What is the streamlined SMCR and who does it apply to?
- What preparatory steps should be taken?
- Timetable

certified persons and non executive directors (Solvency II firms and large NDF's are already subject to this obligation)

- New Conduct Rules will apply to a broad group of employees
- New notification, training and record-keeping obligations

Full scope regime only

- Handover procedures
- Additional prescribed senior manager responsibilities
- Responsibilities map and a requirement to allocate "Overall Responsibility" to a senior manager for every activity, business area and management function of the firm

Is my firm affected?

Yes, if your firm is a Solvency II firm, a large or small NDF, an ISPV or a Society of Lloyds or Lloyds managing agent. All insurers regulated by the FCA and PRA will be affected.

In scope firms will be subject to either the 'full' scope SMCR or a streamlined version.

What are the key elements of the Insurance SMCR?

The SMCR will replace the current enhanced FCA Approved Persons Regime and SIMR for firms currently subject to these regimes.

Key aspects of the proposed insurance SMCR include the following:

Senior Managers

- The FCA has designated five executive and two non-executive roles as 'Senior Management Functions' (SMF's) (Executive Director, Other Overall Responsibility, Conduct Risk, Oversight Officer, Compliance Oversight and Money Laundering Reporting Officer (MLRO), Chair of the Nomination Committee and Chair of the with Profits Committee). The PRA will maintain the existing Senior Insurance Management Functions (SIMF's) but they will be relabelled SMFs.
- Anyone holding a PRA or FCA, SMF will be subject to pre-approval by the relevant regulator (although we expect that 'grandfathering' will apply so individuals currently holding these roles will not require approval on commencement of the new regime). (There is a modified regime for incoming EEA and non EEA branches).
- In addition to the prescribed responsibilities as part of SIMR, certain additional responsibilities prescribed by the FCA will need to be allocated amongst the senior managers (SMs).
- Each SM's individual responsibilities will need to be set out in a 'statement of responsibilities' which must be submitted to the regulators with the senior manager's approval application (subject to grandfathering arrangements). Currently, key function holders (KFH's) at Solvency II firms and large NDF's are required by the PRA

to maintain a 'Scope of Responsibilities' document; this will be renamed a Statement of Responsibility and the obligation will be extended to ISPV's.

- Senior managers will have a statutory 'Duty of Responsibility' and will potentially be accountable if they fail to take reasonable steps to prevent a breach by a firm in their area of responsibility as set out in their statement of responsibilities.
- A criminal record check will have to be undertaken in respect of each senior manager approval application.
- Full scope SMCR firms will be required to ensure there is a senior manager with overall responsibility for every area, business activity and management function (the 'Overall Responsibility' requirement).
- Full scope SMCR firms will have to prepare and maintain a 'responsibilities map' showing the key roles within the firm, the people responsible for them, their responsibilities and lines of accountability. The PRA 'governance map' obligations remain the same (subject to an additional obligation to detail matters reserved to the governing body) and it will be renamed 'managers responsibility map'.
- New Handover Requirements will be introduced for full scope firms; requiring them to take all reasonable steps to ensure that a person taking on a senior manager role has all of the information and materials they could reasonably expect in order to do their job effectively. One means of achieving this is to require the outgoing senior manager to prepare a handover note. Firms will be required to have a policy in place explaining how they have complied with this requirement.

Certification

- Firms are required to identify 'certified persons' who fulfil one or more specified 'Certification Functions'. Firms must then certify anyone performing such a role as fit and proper at least annually. This is one of the most significant changes for insurers.

Conduct Rules

- Firms must also ensure that employees comply with certain 'Conduct Rules' in respect of which firms will have notification training and record keeping obligations.

Who will be a Senior Manager, who will be a Certified Person and who will be covered by the new Conduct Rules?

Senior Managers: no territorial limit

There is no territorial limit on the Senior Managers Regime. It will apply to anyone performing a Senior Management Function whether based in or outside the UK.

Certified Persons

There are prescribed FCA and PRA Certification Functions (CF's) in relation to which relevant individuals will need to be certified, including all individuals who

have been designated as 'material risk takers' (MRTs) for the purposes of the Solvency II Remuneration Code. Most current approved persons below senior management level will become Certified Persons (CP's). In addition some roles that are currently not subject to approval may require certification. Firms will be required to obtain regulatory references before appointing individuals to a CF.

The PRA and FCA are each proposing different Certification Functions. The PRA CF's are as follows:

- Key Function Holders ('KFH's') at Solvency II firms; large NDF's and ISPV's (excluding PRA SMF's/NED's/FCA Controlled Function)
- Material risk takers at Solvency II firms and large NDF's
- Individuals who are managing a risk taker

The FCA proposes eight CF's including a 'significant management' CF.

Firms must ensure that senior managers, non executive directors (who are not senior managers) and certified persons are at all times fit and proper, and must certify them as such at least annually.

The Certification Regime will only apply to Certification Functions based in the UK or to individuals who are based outside the UK who are dealing with UK clients. Note however that all MRT's will be subject the Certification Regime wherever they are located.

Conduct Rules

FCA Conduct Rules will apply to senior managers, certified persons, non executive directors and all employees except ancillary staff such as security, catering and cleaning staff.

The FCA Conduct Rules are comprised of Individual Conduct Rules applicable to all Conduct Rules staff and Senior Manager Conduct Rules. Both categories of Conduct Rules will apply to the firm's regulated and unregulated financial services activities (including related ancillary activities). This is a narrower application than the banking SMCR where the Conduct Rules apply to everything a person does.

The PRA's Conduct Rules apply to a smaller population: those holding PRA Certification Functions or performing an SMF on a temporary basis at Solvency II Firms, ISPV's and large NDF's.

Conduct Rules staff will have to be provided with training in relation to their application. The firm will also be required to notify the regulators in the event Conduct Rule staff are subject to disciplinary action for breaching the Conduct Rules.

Incoming EEA/Non EEA UK Branches

The Certification Regime and Conduct Rules will only apply to people based in the UK; they will not extend to individuals outside the UK even if they deal with UK clients. The Conduct Rules will only apply in relation to matters that are within the UK's scope of responsibilities.

A modified Senior Managers Regime will apply to EEA and non EEA Branches. EEA branches will have two SMF's (EEA branch Senior Manager and MLRO). Non EEA branches will have five FCA SMF's.

What is the streamlined SMCR and who does it apply to?

Small NDF's (i.e. insurance firms that are out of scope of the Solvency II Directive and hold assets of £25m or less) are subject to the streamlined SMCR, which in broad terms is as follows:

- a shorter list of senior manager roles requiring FCA or PRA approval;
- a shorter list of prescribed responsibilities under the PRA's SIMR;
- more time to prepare scope of responsibilities documents;
- no requirement for a governance map;
- a shorter mandatory recordkeeping period for the scope of responsibilities;
- Small run off firms will also be subject to a streamlined SMCR.

What preparatory steps should be taken?

Firms that will be in scope need to consider:

- whether they come within the full or streamlined regime
- who should be on the implementation team
- whether to respond to the FCA/PRA Consultations (directly or via an industry body)
- how they will engage with senior managers (who are not currently SIMF's) and what processes they will adopt for agreeing statements of responsibility with senior managers
- how 'Certification' staff can be identified and certified annually
- how to ensure non-certified staff are not inadvertently performing certified functions
- which staff will be covered by the Conduct Rules
- how training should be updated and delivered
- whether changes to employment documents and processes will be required
- if changes to reference procedures and personal data retention are necessary
- what changes to settlement agreements and termination processes should be implemented

- which individuals will be covered in other group entities
- the practical implementation of the regime in relation to in-scope employees based overseas
- whether the regime presents an opportunity to review governance structures and arrangements

Experience demonstrates the importance of engaging with senior managers early in the implementation process. Equally important is the provision of advice and assistance to them for example by producing a Senior Managers' Handbook and/or offering individual briefings.

Timetable

What?	When?
FCA/PRA Consultations on insurance SMCR rules	26 July 2017
Last date for consultation responses	3 November 2017
Further FCA/PRA consultation	Q3/4 2017
FCA Policy Statement / Final Rules	Summer 2018
Senior Managers and Certification Regimes will apply to insurers	TBA 2018?

Clifford Chance has a team of about 30 lawyers from our employment, litigation and regulatory practices who have supported banks and insurers to implement the Banking and Insurance Senior Managers, Certified Persons and Regulatory Reference Regimes. We would be happy to speak to your firm about the lessons learned from the implementation of the Banking and Insurance Accountability Regimes.

CONTACTS

Katherine Coates
Partner

T +44 207 006 1203
E katherine.coates
@cliffordchance.com

Mike Crossan
Partner

T +44 207 006 8286
E michael.crossan
@cliffordchance.com

Alex Erasmus
Partner

T +44 207 006 1344
E alex.erasmus
@cliffordchance.com

Hilary Evenett
Partner

T +44 207 006 1424
E hilary.evenett
@cliffordchance.com

Chris Goodwill
Partner

T +44 207 006 8304
E chris.goodwill
@cliffordchance.com

Ashely Prebble
Partner

T +44 207 006 3058
E ashley.prebble
@cliffordchance.com

Narind Singh
Partner

T +44 207 006 4481
E narind.singh
@cliffordchance.com

Alistair Woodland
Partner

T +44 207 006 8936
E alistair.woodland
@cliffordchance.com

Amera Dooley
Senior PSL

T +44 207 006 6402
E amera.dooley
@cliffordchance.com

Tania Stevenson
Senior PSL

T +44 207 006 8938
E tania.stevenson
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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