

## Senior insurance managers regime: a new regulatory framework for individuals

### 1 Introduction

On 26 November 2014, Prudential Regulation Authority (“**PRA**”) published a **consultation paper** relating to proposals for a senior insurance managers regime.

The PRA’s consultation paper sets out proposed changes to the PRA’s rules and Approved Persons Regime for insurers in order to implement the Solvency II Directive (“**Solvency II**”) and to include some aspects of the proposed senior managers regime for banks as described in the July 2014 joint consultation paper “Strengthening accountability in banking: a new regulatory framework for individuals” (an overview of which is set out in our earlier **client alert**). The Financial Conduct Authority (“**FCA**”) also published a **consultation paper** setting out proposed amendments to its approved persons regime to take account of Solvency II and building on the PRA’s proposals.

The PRA’s consultation paper proposes the introduction of:

- > A new ‘Senior Insurance Managers Regime’ (“**SIMR**”) for individuals who are subject to regulatory approval by the PRA;
- > A new group of senior persons within insurers known as ‘key function holders’ and
- > A new set of ‘Conduct Standards’ applying to the above individuals as well as a wider set of insurance employees to the extent they perform a ‘key function’.

Firms have until 2 February 2015 to respond to the consultation. Given the amount of feedback on the position of non-executive directors (NEDs) received by the regulators following *the strengthening accountability in banking: a new regulatory framework for individuals* consultation paper, the current consultation papers specifically exclude any proposals relating to non-executive directors. Instead, a further CP will be issued in early 2015 once the the PRA and FCA have reached a view on their approach to NEDs. Another more technical CP covering forms, consequential changes and transitional arrangements will follow. As Solvency II must be implemented by 1 January 2016, it is intended that final rules and supervisory statements are drafted by 31 March 2015.

### Contents

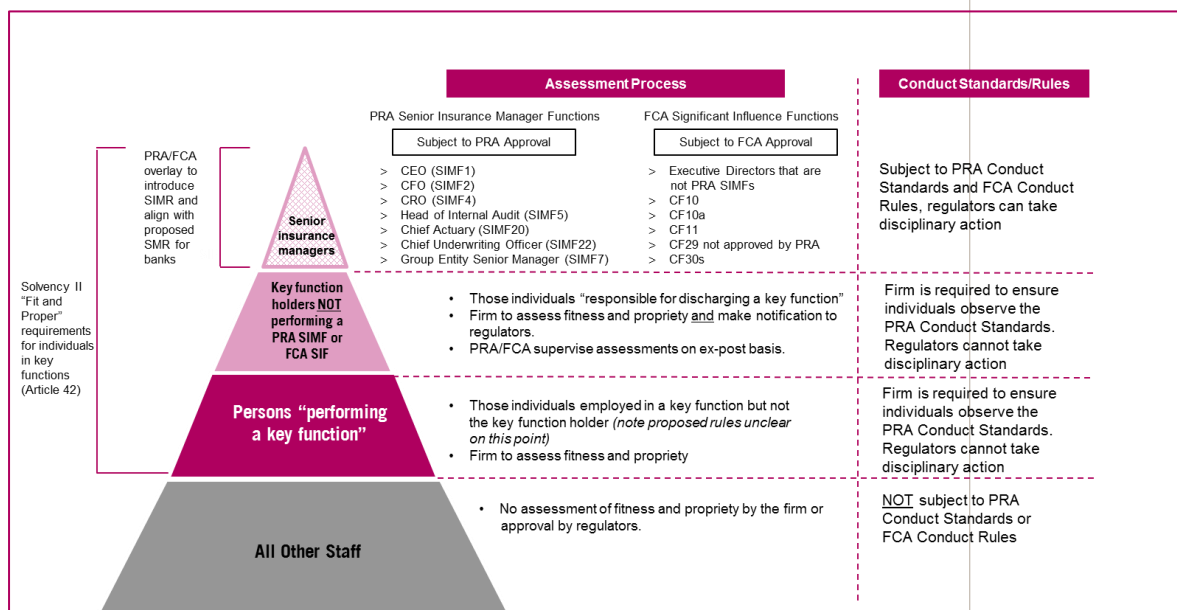
1	Introduction.....	1
2	A Diagrammatical Overview.....	2
3	Context .....	3
4	Which firms does the consultation affect?.....	3
5	Senior Insurers Managers Regime .....	4
6	Other key aspects of the Senior Managers Regime for banks not forming part of the proposals for the SIMR ...	10
7	Firms’ responsibility to vet fitness and propriety of staff	11
8	Conduct Standards..	12
9	Next Steps: what should firms do to prepare?	14

Given the significance of the changes, all firms affected by the regime should consider the consultation papers carefully and start assessing how they might respond to the new requirements.

**Five key highlights** that insurers should be aware of include:

- > The new requirement to produce and maintain a Governance Map: a comprehensive and up-to-date single document that all firms must have detailing the firm’s governance arrangements scope of senior managers’ individual responsibilities;
- > The new set of prescribed responsibilities that must be allocated to senior insurance managers;
- > The new Group Entity Senior Insurance Manager function, which may catch a range of senior individuals in the parent entities of regulated firms;
- > The onus placed on firms to identify their ‘key functions’, beyond the ones already prescribed by Solvency II, depending on their business and organisation; and
- > The new Conduct Standards will replace APER for senior insurance managers, allowing the regulators to impose fines or take other disciplinary action in relation to those persons for breach of the Conduct Standards. The Conduct Standards will also apply to ‘key function holders’ and those individuals ‘performing’ a key function, although it would appear that the onus is on firms to require the relevant individuals to observe such standards. Firms will, in certain circumstances, have responsibility for notifying the PRA of non-compliance with the rules.

## 2 A Diagrammatical Overview



### 3 Context

It is helpful to provide some context to the proposals in the consultation papers, which are at times quite unclear. Broadly, the proposals are designed to update the existing PRA and FCA Approved Persons Regimes to take into account the Solvency II measures relating to governance and the fitness and propriety of relevant individuals within insurers. The PRA is also proposing to amend certain aspects of the Approved Persons Regime to include some aspects of the Senior Managers Regime which will be introduced next year for banks.

The statutory footing for the draft rules is Solvency II, which introduces a number of concepts which are either not defined or do not fit neatly into existing regulation. The interplay between Solvency II requirements and those aspects of the Senior Managers Regime for banks being carried across has also led to a certain degree of overlap and lack of clarity as to the scope and application of some of the proposed rules. For example, the Senior Managers Regime for banks and the existing Approved Persons Regime require pre-approval of certain individuals performing controlled functions. Solvency II, on the other hand, only requires a notification of 'key function' holders to be made to the regulator, with supervision taking place on an ex-post basis. This has resulted in a lack of clarity as to which individuals should fall within each category.

Additionally, Solvency II introduces the notion of 'performing' a key function and the PRA draft rules apply a set of new Conduct Standards to those individuals 'performing' a key function. However, there is no explanation within the consultation paper as to which individuals working within an insurer would fall within this category.

### 4 Which firms does the consultation affect?

The proposals apply to all firms within the scope of Solvency II, including insurance and reinsurance firms, UK branches of foreign firms, Insurance Special Purpose Vehicles, the Society of Lloyd's and managing agents.

Solvency II will apply to between 400 and 450 retail and wholesale insurance and reinsurance firms. Approximately 100 smaller firms (which remain classified as non-Directive firms under both Solvency I and Solvency II) will remain subject to existing rules and regulation. The PRA has said that it will consider how to develop the regime applying to these smaller firms, indicating the potential for some future alignment of the regime for smaller firms with the new Solvency II regime for larger insurers.

The PRA notes that many groups contain both banks and insurers and that operating two very distinct Senior Managers Regimes would be complex and inefficient. Nevertheless, as explained further below, there are a number of differences between the proposals for the two regimes, adding another layer of complexity as firms seek to plan for the rules coming into force.

The Senior Managers Regime for banks will be extended so as to apply in some form to UK branches of foreign banks (see the Treasury's [consultation paper](#) published on 17 November 2014). The SIMR is drafted so as already to apply a number of the provisions to UK branches of foreign insurance firms.

## 5 Senior Insurers Managers Regime

The proposed SIMR seeks to ensure that senior persons who are effectively running insurers, or who have responsibility for other key functions at those firms, will behave with integrity, honesty and skill. Such individuals should be responsible and accountable for the sound and prudent management of the firm. The proposed SIMR will cover:

- > senior insurance managers, who are subject to pre-approval by the PRA for a controlled function; and
- > all other senior persons (termed 'key function holders') who are effectively running an insurer or who have responsibility for other key functions at those insurers, who will also need to be assessed as being fit and proper by the PRA.

### 5.1 Who is in scope of the SIMR?

The PRA states that the scope of people subject to approval as senior insurance managers should be more granular and role-specific than those covered under the current PRA Approved Persons Regime. The intention behind a more focused group of individuals is to assist the PRA in holding individuals responsible and accountable for the ongoing safety and soundness of the firm and to provide appropriate protection for policy holders. The table below shows the list of proposed SIMFs.

Chief Executive function	SIMF1	PRA
Chief Finance function	SIMF2	PRA
Executive Director	SIMF3	PRA
Chief Risk function	SIMF4	PRA
Head of Internal Audit	SIMF5	PRA
Group Entity Senior Insurance Manager function	SIMF7	PRA
Third country branch manager function	SIMF19	PRA
Chief Actuary function	SIMF20	PRA
With-Profits Actuary function	SIMF21	PRA
Chief Underwriting function	SIMF22	PRA
Underwriting Risk Oversight function (Lloyd's only)	SIMF23	PRA

SIMF1 – SIMF5 are intended to bring the regime for insurers in line with the comparable functions proposed for banks. As the fit and proper requirements under Solvency II apply to insurance groups and holding entities, the PRA proposes that those parent company (or other group) senior executives who

have a significant influence on the management or conduct of the affairs of the insurer, in relation to its regulated activities, will also be subject to pre-approval (SIMF7). This new function also aligns the regime for insurers with the regime for banks. This is a continuation of the current view of the regulators whereby a person employed in a parent or group entity who exercises significant influence over the firm should be subject to regulatory approval.

The draft rules only make the Chief Executive function and the Chief Finance function mandatory for firms (other than third country branch undertakings, where only the third country branch manager function is mandatory). The PRA does not provide much clarity on how firms should decide whether they need to appoint individuals as other senior insurance manager functions. In part, this will depend on the type of insurance firm (e.g. the with-profits actuary function would only apply in respect of firms carrying on with-profits insurance business).

It appears that the PRA does not expect the entirety of the board to need PRA approval unless they are all performing controlled functions.

## **5.2 Additional FCA SIFs**

The FCA proposes requiring pre-approval of all individuals taking up executive and certain other functions whom the PRA has not otherwise approved. These individuals will become FCA SIF holders, and subject only to the FCA's approval process. For the remaining PRA controlled functions, the FCA proposes to maintain the existing approve and consent model to ensure that candidates are suitable from a consent perspective. This will include (for UK-incorporated non-ISPV firms):

- > Directors (CF1s) not otherwise approved by the PRA
- > Apportionment and oversight function (CF8)
- > Compliance function (CF10)
- > CASS Operational Oversight function (CF10a)
- > Money Laundering Reporting Officer (CF11)
- > Significant Management function (CF29) not otherwise approved by the PRA
- > Customer function (CF30)

The FCA believes that from the above FCA-designated functions, the most likely to be regarded as Solvency II key functions are CF29, CF10 and CF8, though the FCA plan to give further consideration to the CF8 function.

The upshot of the PRA's and FCA's proposals in relation to approved persons is that there are going to be senior people within an insurer subject to different regimes – senior insurance managers approved by the PRA and significant influence function holders approved by the FCA. Considering that many groups contain banks, insurers and other regulated entities, many

organisations will be forced to navigate their way through an approved persons matrix involving different rules and procedures under the Senior Managers Regime for banks, the Senior Managers Regime for insurers, the SIF regime for certain individuals of insurers, and the approved persons regime for other individuals.

### **5.3 Job Sharing**

The PRA has stated that, in certain circumstances including job sharing arrangements, a firm may have more than one individual responsible for a single controlled function. However, the PRA expects the norm to be for every firm to have a single individual performing each of the PRA CFs which the firm is required to have. Any job shares must be appropriate and justified, and a clear explanation of how the relevant responsibilities are allocated, along with reporting lines and responsibilities of each individual, must be clearly documented.

In relation to smaller firms and third country branch undertakings, PRA acknowledges that it may be appropriate to combine responsibilities for different functions within a single individual.

### **5.4 Key Function Holders**

As well as designating a number of senior insurance manager functions, the PRA also proposes to introduce a requirement that firms determine a number of 'key functions', as well as identifying which of those key functions amounts to 'effectively running the firm'. Persons who are responsible for discharging a key function will be known as 'key function holders'.

These proposals derive directly from Solvency II. While firms will need to determine themselves which are their key functions depending on their business and operation, there are four functions specified in Solvency II that must be included within the system of governance: the risk-management system function; the compliance function; the internal audit function; and the actuarial function. The draft rules also include the functions of 'effectively running the firm' and/or 'any other function which is of specific importance to the sound and prudent management of the firm'.

The PRA has given firms a significant degree of flexibility in relation to the final two categories, providing some generic guidelines to firms on assessing whether any other key functions are of specific importance to the firm (e.g. the function is essential for the proper functioning of the firm or group considering its risk profile and business). Furthermore, the term 'effectively running the firm' is not defined in the consultation paper, leading to a degree of uncertainty as to which individuals should take on the role of 'key function holder'. On the other hand, the absence of prescriptive criteria mean that, to a certain extent, firms can freely decide how to organise each function in practice, taking into account the nature, scale and complexity of the risks inherent in their business. This is in line with the principle of proportionality derived from the European legislation on which these proposals are based,

which recognises that a 'one size fits all' approach may not be appropriate for a diverse range of insurance companies falling within the scope of the rules.

## 5.5 Overlap between Senior Insurance Managers and 'Key Function Holders'

As explained above, the PRA's proposals introduce both a list of senior insurance manager functions and a responsibility on firms to determine a number of key functions and assign individuals as 'key function holders' to discharge the responsibility for the key functions. It is apparent that there is a significant degree of overlap between the two sets of functions; for example the Head of Internal Audit (SIMF5) would be the same as the 'key function holder' responsible for the mandatory key function of internal audit. As recognised by the PRA in the CP, key function holders responsible for a key function will include those individuals proposing to hold a controlled function (i.e. a senior insurance management function).

For those 'key function holders' who are covered by the Solvency II fit and proper requirements but who are not exercising either a PRA or a FCA controlled function, the PRA proposes to supervise insurers' assessments of whether a person is fit and proper on an *ex-post* basis.

The proposal of having both senior insurance manager functions and 'key function holders' which may overlap is unclear and may lead to some confusion as to which 'key function holders' require regulatory pre-approval and which do not.

The overlapping and confusing proposals can be explained by the fact that the PRA is trying to transpose the Solvency II regime in a way that aligns as far as statutorily possible with the regime for senior managers in banks. Solvency II only requires 'key function holders' to be notified to the regulators so that an assessment of fitness and propriety can take place on an *ex-post* basis. However, the PRA recognises that its existing approved persons regime can be adapted to require pre-approval of those 'key function holders' who also perform a controlled function, and has designated certain senior insurance manager functions to enable such pre-approval, in line with the senior managers regime for banks.

## 5.6 What will each SIMF be responsible for?

The PRA proposes to require firms to allocate a number of PRA prescribed responsibilities ("**Prescribed Responsibilities**") to any senior insurance manager performing a controlled function specified by the PRA or FCA, or, if appropriate, to a non-executive director.<sup>1</sup> However, in practice, the PRA expects firms will generally allocate prescribed responsibilities to the function to which they are most closely linked. These can be summarised as follows:

- (i) ensuring that the firm has complied with the obligation to satisfy itself that persons performing a key function are fit and proper;

---

<sup>1</sup> subject to the regulators' further consultation on non-executive directors.



- (ii) leading the development of the firm's culture and standards;
- (iii) embedding the firm's culture and standards in its day-to-day management;
- (iv) production and integrity of the firm's financial information and regulatory reporting;
- (v) allocation and maintenance of the firm's capital and liquidity;
- (vi) development and maintenance of the firm's business model;
- (vii) performance of the firm's Own Risk and Solvency Assessment (ORSA);
- (viii) induction, training and professional development for all the firm's key function holders;
- (ix) maintenance of the independence, integrity and effectiveness of the whistleblowing procedures, and the protection of staff raising concerns; and
- (x) oversight of the firm's remuneration policies and practices.

The PRA proposes that (ix) and (x) be allocated to one or more non-executive directors, while a third country branch undertaking need only allocate (i), (iv), (v), (vi), (vii) of the above Prescribed Responsibilities. In the Senior Managers Regime for banks, the PRA had proposed that the equivalent of items (iii) and (viii) also needed to be allocated to a non-executive director – it is unclear whether not specifying the same in the context of the SIMR is an indication that this aspect of the Senior Managers Regime for banks may be due to change.

The PRA does not deliberate on the rationale for picking these topics as Prescribed Responsibilities, but notes that Solvency II recognises that central to good governance is the appropriate and transparent allocation of oversight and management responsibilities within each firm and group. This aspect of the proposals draws heavily on the Senior Managers Regime for banks, under which the regulators proposed a number of matching prescribed responsibilities. The PRA has not duplicated the core responsibilities that would be attributed to those individuals performing the four mandatory key functions, namely the actuarial, risk management, internal audit and compliance functions.

It appears that these Prescribed Responsibilities can be allocated to one or more senior insurance managers, alleviating a concern that arose in relation to the proposals for the senior managers regime for banks which implied that each prescribed responsibility should be allocated to a single individual.

For all those individuals who are taking up a post as a senior insurance manager or 'key function holder', insurers will be required to complete and send to the PRA a form containing relevant information about that individual. This form will include, *inter alia*, information about their skills and experience,



along with the scope of all their responsibilities at the firm. It appears that this requirement is additional to the pre-approval process for those individuals performing controlled functions. However, it does not seem that these forms will acquire the same status as the 'Statement of Responsibilities' to be completed in respect of individual senior managers in banks and which the regulators have openly stated will be used in authorising, supervising and enforcing against senior managers in banks. Rather, the PRA proposes to refer to a firm's governance map ("**Governance Map**") throughout the regulatory lifecycle of a firm in respect of those individuals performing controlled functions.

### 5.7 Governance Map

The PRA proposes that a firm must have, at all times, a comprehensive and up-to-date single document, known as a Governance Map. This must include the following details:

- > a list of the firm's key functions, highlighting those that amount to effectively running the firm;
- > the names of persons who effectively run the firm or who are responsible for other key functions;
- > for the above persons, a summary of the significant responsibilities allocated to them, including any prescribed responsibilities;
- > where any such responsibilities are allocated to more than one person, details of how those responsibilities are shared or divided between the persons concerned;
- > reporting lines and lines of responsibilities for each of the persons who effectively run the firm or are responsible for the key functions;
- > where the firm is part of a group:
  - > how the firm's management and governance arrangements fit together with those of its group; and
  - > for those persons effectively running the firm or who are responsible for key functions, details of the reporting lines and lines of responsibility to persons who are employees, or committees, of other group members.

The requirements for the Governance Map do not appear to be quite as prescriptive as the proposed requirements for the equivalent Responsibilities Map applying to banks (see, for example, the draft SYSC rules forming part of the regulators' joint July 2014 consultation paper *Strengthening accountability in banking: a new regulatory framework for individuals*). Further, there is no a requirement that a firm's board annually confirm that there are no gaps in the allocation of responsibilities within the firm, nor is there a proposed prescribed responsibility devoted specifically to compliance with the rules relating to the firm's management responsibilities/governance map.

However, insurers should take note that the PRA proposes to use the Governance Map as an important tool for supervising insurers, including in particular its assessment of the overall corporate governance of insurers. The PRA will refer to the Governance Map during the initial assessment of a person seeking to perform a controlled function, in its daily supervision of insurers and those performing controlled functions, and in enforcement cases, as evidence of individual responsibility for the area where the alleged breach occurred.

## **6 Other key aspects of the Senior Managers Regime for banks not forming part of the proposals for the SIMR**

The following proposals made by the regulators in relation to the proposed Senior Managers Regime for banks have not been carried across to the proposals for the SIMR:

- (i) the criminal offence of reckless mismanagement causing a financial institution to fail;
- (ii) the presumption of responsibility for the purposes of establishment misconduct by senior managers;
- (iii) the Certification Regime: requiring banks to certify as fit and proper those bank employees whose actions could have a material impact on the risk profile of the firm;
- (iv) the detailed proposals in SYSC on handover arrangements; and
- (v) conditional approval of senior managers: for senior managers in banks, the regulators have the power to time-limit their approval or grant conditional approval, but this proposal does not appear to have been carried over to the regime for insurers.

The main explanation for these differences is the different statutory footing on which the proposals are based; the Senior Managers Regime for banks is based on the Financial Services (Banking Reform) Act 2013 and associated amendments to FSMA, while the senior managers regime for insurers is primarily based on the Solvency II regime. However, the PRA also acknowledges that the regime for insurers should not be identical to the regime for banks; the business model of an insurer and the risks it poses to the PRA's objectives are different to those of a bank.

While the proposed regime for insurers appears to be 'lighter-touch' compared to that proposed for banks, a number of the requirements will considerably alter the current regulatory landscape as it applies to insurers and individuals working in insurers.

For those groups containing both banks and insurers, navigating which rules apply to which employees (both at a senior and junior level) is set to become increasingly complex, and may ultimately impact compliance with those rules. Given that the Governance Map needs to include details of reporting lines/governance arrangements with other members of the group, for some

groups there will inevitably be some overlap between the Governance Map applying to insurance firms and the Responsibilities Map applying to banks.

## **7 Firms' responsibility to vet fitness and propriety of staff**

The PRA proposes that firms should be responsible for assessing, on an on-going basis, the fitness and propriety of individuals, and sets out in the rulebook a non-exhaustive list of factors that firms should consider as part of this assessment. The requirement applies in respect of:

- > those individuals who effectively run a firm; and
- > those individuals who perform some other key function.

In making this assessment, firms should apply the draft rules set out in the rulebook, and also have regard to the European Insurance and Occupational Pension Authority's (EIOPA's) Guidelines on Systems and Governance. The draft rules require firms to be satisfied that the person:

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

required to enable such person to perform his or her key function effectively and to enable the sound and prudent management of the firm. The firm should also consider the person's past business conduct, and be satisfied that the person discharges their function in accordance with conduct standards (see below).

According to the PRA, these new requirements codify a long-standing regulatory expectation that insurers should be primarily responsible for assessing the fitness and propriety of their key-decision makers, and of those employees who are capable of causing significant harm either to the insurer or to its policy holders. However, the PRA may test the robustness of both the design and effectiveness in practice of an insurer's policies and procedures for reviewing the fitness and propriety of relevant individuals.

In respect of those individuals looking to become a senior insurance manager, the draft rules require the firm to satisfy itself, before applying for approval on a candidate's behalf, that the candidate is fit and proper to perform the function. Additionally, the draft rules require firms to request references from previous employers for the last five years as part of their assessment of the person's fitness and propriety to perform a controlled function. The draft rules oblige such previous employers, to the extent they are FCA or PRA authorised, to disclose all matters of which they are aware and which could be relevant to the assessment of the individual's fitness and propriety. Firms must also obtain criminal records checks in respect of those individuals seeking to perform a controlled function.

In respect of those individuals performing key functions (and also presumably 'key function holders' who do not have a controlled function – although the rules are not clear on this), firms are required to have policies and procedures in place to assess their fitness and propriety on an on-going basis. In performing this ongoing assessment, firms should satisfy themselves that an individual discharges his or her key functions in accordance with the Conduct Standards, described below.

The FCA also proposes to amend the Fit and Proper Test for Approved Persons to state that they will take into account the Solvency II framework when making an assessment. This will include consideration of firms' own assessment of candidates' fitness and propriety as required under PRA rules.

## **8 Conduct Standards**

The PRA states that it proposes to revise the conduct standards which are set out in the APER section of the PRA Handbook, along the lines of the conduct rules proposed for individuals working for banks and investment firms under the Senior Managers Regime for banks.

### **8.1 What are the new Conduct Standards?**

The PRA proposals indicate two layers of conduct standards. The first three apply to anyone performing a key function:

- > You must act with integrity.
- > You must act with due skill, care and diligence.
- > You must be open and cooperative with the FCA, the PRA and other regulators.

There are an additional five standards that only apply to 'key function holders':

- > You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- > You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- > You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- > You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.
- > When exercising your responsibilities, you must pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits.

## 8.2 Who will be subject to the Conduct Standards?

The three generic standards apply to any person 'performing' a key function. The notion of 'performing a key function' is neither defined nor explained in any detail in the PRA's consultation paper, and as such it is not clear exactly which employees within insurers will be subject to the Conduct Standards. Broadly speaking, persons 'performing a key function' could include those 'key function holders' discharging responsibility for that key function, as well as those individuals working under that 'key function holder', for example, in relation to the key function of internal audit. It is not clear how far down the Conduct Standards reach; would they only apply to those employees who are capable of causing significant harm either to the insurer or to its policy holders? This explanation was used by the PRA as its rationale for requiring firms to assess the fitness and propriety of those employees 'performing a key function', and one could infer that the same reasoning could be used to define 'perform' in this context.

The five further Conduct Standards are relevant specifically to senior insurance managers and 'key function holders' (other than NEDs).

It would seem that it is up to the firm to require those 'performing' a key function and those 'key function holders' who do not have a controlled function to observe the relevant Conduct Standards. As the regulators can only make conduct rules in relation to approved persons (except in relation to banks, where the new Senior Managers Regime empowers the regulators to make rules of broader application), presumably breach of the Conduct Standards is intended to lead only to internal disciplinary consequences in appropriate cases, as the regulators have no ability to impose sanctions on these individuals.

The FCA proposes to apply rules 1-5 of the Conduct Rules proposed in *the Strengthening accountability in banking: a new regulatory framework for individuals* consultation paper to all FCA and PRA approved persons in Solvency II firms. These are the same as the PRA's Conduct Standards described above, but include the additional rules of treating customers fairly and observing proper standards of market conduct. The FCA also proposes to apply a further set of significant influence function holder conduct rules (which are equivalent to those rules which apply only to senior managers in banks) to FCA SIF holders only within Solvency II firms, and to all PRA approved persons in such firms. These SIF rules are the same as the first four additional Conduct Standards described above.

## 8.3 Supervision and Enforcement of the Conduct Rules

The PRA believes that the introduction of the conduct rules for certain employees in insurers will enable a 'suitable alignment of the conduct standards for individuals at both insurers and banks'. The rationale for the conduct rules applicable to certain banking staff under the Senior Managers

Regime was that the existing APER and Statements of Principle were 'insufficiently robust foundation for improving banking standards'<sup>2</sup>.

The PRA will retain legal powers to take formal supervisory and enforcement action against approved persons in respect of breaches of Conduct Standards.

The Senior Managers Regime applicable to banks will require firms to notify the regulators when they are aware or suspect that a person has breached the conduct rules. No such requirement applies in respect of insurers unless the relevant person is a key function holder or performs a controlled function. Rather, insurers must promptly and fully investigate the position and take appropriate action where it identifies that a person performing a key function has failed to observe a Conduct Standard (or any matter relevant to an assessment of whether an individual is fit and proper).

The existence of this obligation highlights the importance of firms being clear at the outset about the individuals to which the Conduct Standards will apply, something which is not particularly clear from the Consultation Paper.

## **9 Next Steps: what should firms do to prepare?**

The regulators will publish a technical CP in due course. This will cover forms, consequential changes, and detailed rules on transitional arrangements.

An initial tranche of rules and the corresponding parts of the supervisory statements are to be made in March 2015, and commenced on 1 January 2016. This initial tranche will cover:

- > the requirement for firms to ensure that all persons performing a key function are fit and proper;
- > the criteria for the fit and proper assessment, including consideration of a person's past business conduct;
- > notification of information on individuals to the PRA;
- > identification of key functions; and
- > compilation of a governance map.

The PRA will set out its planned timetable later this year for the implementation of the remaining proposed rules.

Given the relatively short period before the new regime will come into force, firms should start giving immediate thought to these issues, as well as considering which issues in the consultation papers require clarification or amendment. While many firms may have well developed existing governance frameworks, the task of re-casting it so as to define reporting lines and apportion responsibilities in line with the expectations set out in the consultation paper will not be a straightforward one.

---

<sup>2</sup> The Parliamentary Commission on Banking Standards 's Report *Changing banking for good* published in June 2013

Author: Various

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2014

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ or on [www.linklaters.com](http://www.linklaters.com) and such persons are solicitors, registered foreign lawyers or European lawyers.

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on our regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at [marketing.database@linklaters.com](mailto:marketing.database@linklaters.com).

## Contacts

For further information  
please contact:

### **Michael Kent**

Partner, Financial Regulation Group  
(+44) 20 7456 3772  
[michael.kent@linklaters.com](mailto:michael.kent@linklaters.com)

### **Peter Bevan**

Partner, Financial Regulation Group  
(+44) 20 7456 3776  
[peter.bevan@linklaters.com](mailto:peter.bevan@linklaters.com)

### **Nadia Swann**

Partner, Financial Regulation Group  
(+44) 20 7456 5232  
[nadia.swann@linklaters.com](mailto:nadia.swann@linklaters.com)

### **Martyn Hopper**

Partner, Financial Regulation Group  
(+44) 20 7456 5126  
[martyn.hopper@linklaters.com](mailto:martyn.hopper@linklaters.com)

### **Carl Fernandes**

Partner, Financial Regulation Group  
(+44) 20 7456 3002  
[carl.fernandes@linklaters.com](mailto:carl.fernandes@linklaters.com)

### **Sarah Parkhouse**

Partner, Financial Regulation Group  
(+44) 20 7456 2674  
[sarah.parkhouse@linklaters.com](mailto:sarah.parkhouse@linklaters.com)

### **Harry Eddis**

Partner, Financial Regulation Group  
(+44) 20 7456 3724  
[harry.eddis@linklaters.com](mailto:harry.eddis@linklaters.com)

### **Nikunj Kiri**

Partner, Financial Regulation Group  
(+44) 20 7456 3256  
[nikunj.kiri@linklaters.com](mailto:nikunj.kiri@linklaters.com)

### **Umesh Kumar**

Partner, Financial Regulation Group  
(+44) 20 7456 4108  
[umesh.kumar@linklaters.com](mailto:umesh.kumar@linklaters.com)

One Silk Street  
London EC2Y 8HQ  
Telephone (+44) 20 7456 2000  
Facsimile (+44) 20 7456 2222

[Linklaters.com](http://Linklaters.com)