New regulatory framework for insurance:

Proposed Senior Insurance Managers Regime (SIMR) - PRA Proposals (CP14/26)

FCA consultation on changes to the approved persons regime for Solvency II firms (CP14/25)

Summary

As a result of two separate but related developments (Solvency II implementation and consequential changes to banking regulation) the two financial regulators - the PRA and the FCA - have published linked consultation papers setting out suggested changes to significant aspects of insurance regulation. As the PRA states: “These proposed rules, along with the expectations set out in some draft supervisory statements, will set out the regulatory framework to ensure that those individuals who run insurers have clearly defined responsibilities and behave with integrity, honesty and skill”. This reflects the movement towards stronger individual responsibility which was a recommendation of the Banking Commission for the banking sector and the belief by the Commission and others that the existing approved persons regime was no longer ‘fit for purpose’ for the whole financial services regulated community. Both consultations close on 2nd February 2015.

The PRA consultation paper (CP14/26) sets out the PRA's proposals in relation to:

- further changes to the PRA’s rules to implement the Solvency II Directive, notably the measures relating to governance and the fitness and propriety of relevant individuals;
- the scope of the PRA’s proposed new Senior Insurance Managers Regime (SIMR) for insurers;
- the allocation of responsibilities to senior insurance managers; and
- the application of conduct standards to individuals performing key functions.

As well as seeking greater individual responsibility, the PRA also wants to be able to examine the assessment process used by firms to achieve this.

The FCA consultation paper (CP14/25) focuses on changes to the approved persons regime for Solvency II firms. The paper proposes changes to the approved persons regime for Solvency II firms to address:

- the FCA's role in reviewing firms' assessments of the fitness and propriety of certain important individuals within these firms;
- the provisions in the Financial Services (Banking Reform) Act 2013 that permit regulators to apply conduct rules to certain individuals in authorised firms; and
- the PRA's proposed reforms to the scope of its pre-approval regime.

Links
Proposed new regulatory framework for Insurance

Two consultation papers setting out proposed changes to the framework for insurance regulation have been published by UK regulators (26th November 2014). These stem from two developments. First, the need to incorporate legal requirements under the Solvency II Directive implementation of the ‘fit and proper’ requirement for relevant individuals; and secondly, in parallel, the need to align the insurance sector with changes being made to banking supervision as a result of the Banking Act and the belief that the current ‘approved persons regime’ is no longer fit for purpose for any part of financial services. The main impact of the proposed changes is to strengthen the regulatory regime applicable to individuals and to toughen the governance and vetting regime.

As the PRA states: “These proposed rules, along with the expectations set out in some draft supervisory statements, will set out the regulatory framework to ensure that those individuals who run insurers have clearly defined responsibilities and behave with integrity, honesty and skill”. This reflects the movement towards stronger individual responsibility which was a recommendation of the Banking Commission for the banking sector and the belief by the Commission and others that the existing approved persons regime was no longer ‘fit for purpose’ for the whole financial services regulated community.

The proposals will impact between 400 and 450 insurers which fall within the scope of Solvency II and apply to the Society of Lloyd’s and Lloyd’s managing agents, the UK branches of third country insurers and Insurance Special Purpose Vehicles. Non-Solvency II insurers will continue to operate under the existing approved persons regime. Further consideration will be given by both regulators as to whether similar changes are required for other types of authorised firms.

PRA consults on senior insurance managers regime

The PRA’s consultation paper, Senior insurance managers regime: a new regulatory framework for individuals (CP26/14), sets out the regulator’s proposals in relation to:

- further changes to the PRA’s rules to implement the Solvency II Directive, notably the measures relating to governance and the fitness and propriety of relevant individuals;
- the scope of the PRA’s proposed new SIMR for insurers;
- the allocation of responsibilities to senior insurance managers; and
- the application of conduct standards to individuals performing key functions.

The proposed SIMR seeks to ensure those holding senior responsibility within insurers will “behave with integrity, honesty and skill”. Though similar to the regime set out for banks in the recent Banking Act, the proposals for insurers do differ in some important respects including the non-inclusion of criminal offences and the ‘presumption of responsibility provision’. Roles in scope include CEOs, CFOs, CROs and the head of Internal Audit as well as the Chief Actuary. The FCA’s consultation covers executive functions beyond the scope of the PRA’s control functions (CFs) and it is proposed that these will be covered by the existing approve persons regime.

The PRA’s proposals require a number of specified responsibilities to be assigned to a person approved by the PRA or FCA. The ten responsibilities are:

- the firm’s Solvency II ORSA;
- its training and induction of key function holders;
- its business model;
- leading the development of its culture;
- embedding its culture;
• the integrity of its financial information and reporting;
• its remuneration policies;
• its whistleblowing procedures;
• its vetting processes; and
• its capital and liquidity.

The PRA’s proposals also require firms to:
• develop a ‘Governance Map’ detailing the positions of senior personnel and key functions. The map will be used by the PRA in its supervision of the firm. It will also form part of enforcement cases against individuals as evidence of individual responsibility;
• to make non observance of conduct standards a disciplinary offence; and
• to undertake due diligence on an individual’s competence and capability to meet the conduct standards.

The SIMR for insurers reflects the particularities of insurers’ business models and the relevant legislation, and is not the same as the Senior Managers Regime (SMR) proposed for banks in CP14/14. A related consultation from the FCA (to be read in conjunction with this CP) is discussed below. The PRA expects to publish further consultation material on the role of Non-Executive Directors in the SIMR in early 2015, taking into account the context of both the insurance and banking regimes.

As the paper states:

This consultation paper (CP) follows on from CP16/14, and sets out some further proposed changes to the PRA’s rules to implement the ‘fit and proper’ requirement provisions of the Solvency II Directive, and to introduce a new Senior Insurance Managers Regime (SIMR). These proposed rules, along with the expectations set out in some draft supervisory statements, will set out the regulatory framework to ensure that those individuals who run insurers have clearly defined responsibilities and behave with integrity, honesty and skill.

Individual competence and qualifications

A key part of the new approach is the focus on personal responsibility of senior individuals. This is a continuation of the enhanced Significant Influence Function (SIF) regime. The PRA paper states:

“Individuals seeking approval to perform a CF specified by the PRA will be subject to a process that will involve an assessment of the candidate’s propriety, reputation and financial soundness; competence and capability to carry out the role; taking account of the qualifications, training, competencies and personal characteristics; and understanding of the regulatory requirements and the nature of the relationship they envisage maintaining with the regulators”.

These proposals reflect a significant shift - similar to the banking proposals - towards stronger personal responsibility. As well as seeking greater individual responsibility, the PRA also wants to be able to examine the assessment process used by firms to achieve this. This will be required to be codified by the firm as part of a Governance map.

Firms will need clear frameworks in place to develop individuals and assess whether they meet the requirements.

There will be a requirement for clear and distinct training in conduct to ensure compliance with the FCA/FCA requirements.
FCA consults on changes to the approved persons regime for Solvency II firms

The FCA has also published a consultation paper, *Changes to the Approved Persons Regime for Solvency II firms* (CP14/25) relating to senior management responsibilities and conduct. As with the PRA’s consultation, those firms affected are those within scope of the Solvency II directive. The consultation paper proposes changes to the approved persons regime for Solvency II firms to address:

- the FCA’s role in reviewing firms’ assessments of the fitness and propriety of certain important individuals within these firms;
- the provisions in the Financial Services (Banking Reform) Act 2013 that permit regulators to apply conduct rules to certain individuals in authorised firms; and
- the PRA’s proposed reforms to the scope of its pre-approval regime.

Conduct Standards

The conduct standards set out in the code of practice for approved persons (APER) part of the FCA Handbook are to be revised in line with the conduct rules set out for individuals working for banks and investment firms. These conduct standards will include three generic standards relevant to individuals performing a key functions. These cover:

- acting with integrity;
- acting with due skill care and diligence; and
- dealing with regulators in an open and co-operative way.

The FCA’s Conduct Rules build on the existing APER, with two additions. Individuals will be explicitly required to pay due regard to the interests of customers and treat them fairly, mirroring existing obligations on firms. Secondly, there is a specific requirement on those in positions of particular responsibility to take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of that delegated responsibility effectively.

Timetable

Both consultations close on 2 February 2015.

The PRA is required to ensure Solvency II rules are in place by Tuesday 31 March 2015, and take effect on 1 January 2016. The changes set out in the PRA’s consultation paper will follow this timetable.

The PRA will consult in early 2015 on the proposed framework for NEDs and whether they fall in scope. It will also provide a more detailed technical consultation paper later in the year which will cover forms, consequential changes and transitional arrangements to the new SIMR.

CII action

These changes (and consultations) will have considerable implications for the future regulation of insurance. The CII is looking at how it can support individuals and firms in terms of training and competence as the shape of these reforms are firmed up in 2015.

CII Group Policy & Public Affairs

*CII Group Policy & Public Affairs*  
*December*

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For more information on the CII and its policy and public affairs function, including examples of the range of issues in financial services and insurance that we cover, please see: [www.cii.co.uk/policy](http://www.cii.co.uk/policy).
Appendix 1

Response from Andrew Tyrie, chairman of Treasury Select Committee

“Today’s proposals – which address some of the deficiencies of the APR for insurers – are a welcome step towards improving regulatory oversight of senior individuals in insurance. They are going with the grain of the intentions of the Treasury Committee and the Banking Commission.

“The crisis showed that there must be much greater individual responsibility in financial services. The amended regime will need to identify who is responsible for what at the very top. It needs to operate not as an initial gateway to taking up a post, but rather as a system through which the regulators can ensure the continuing exercise of individual responsibility at the most senior levels. Implementation will require the regulators to exercise judgement. In all these respects, today’s proposals are a step forward. Moving away from the APR approach and identifying a much smaller group of those who should bear individual responsibility need not mean more regulation. If intelligently applied, it could mean less”.