

## The Senior Insurance Managers Regime for Solvency II firms: A practical guide

### What? Why?

The PRA and FCA are introducing a new Senior Insurance Managers Regime (**SIMR**). There are two main reasons - to: (1) implement Solvency II; and (2) make it easier to hold individuals to account, when things go wrong.

### When?

There are four key deadlines:

1. from 1 January 2016;
2. by 8 February 2016;
3. from 7 March 2016; and
4. by 7 September 2016.

### Where?

The new rules will apply to UK-domiciled Solvency II insurers and reinsurers (**(re)insurers**), UK-domiciled “non-directive firms”, and third-country (re)insurance branches, in different ways. This guide is only concerned with the SIMR for UK-domiciled Solvency II (re)insurers.

### How?

#### From 1 January 2016:

The controlled function holder regime will not change materially on 1 January 2016. So:

- a) a (re)insurer will still have to “take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by [the (re)insurer] in relation to the carrying on by [it] of a regulated activity, unless the appropriate regulator approves the performance by that person of the controlled function to which the arrangement relates”; and

b) the controlled functions will still be:

Type	CF	Description
<i>PRA governing functions</i>	1	Director
	2	Non-Executive Director
	3	Chief Executive
<i>PRA required functions</i>	12	Actuarial
	12A	With-Profits Actuary
<i>FCA required functions</i>	8	Apportionment and Oversight
	10	Compliance Oversight
	11	Money Laundering Reporting
<i>PRA systems and controls function</i>	28	Systems and Controls
<i>FCA significant management function</i>	29	Significant Management
<i>FCA customer dealing function</i>	30	Customer

However, a (re)insurer will be required to comply with 7 new rules from 1 January 2016.

#### **Allocation of responsibilities**

**Rule 1:** A (re)insurer must:

- a) identify each of the Functions that it regards as a Key Function
- b) identify the Key Functions that “amount to effectively running the firm”;
- c) keep its identification of Key Functions up to date; and

- d) keep a record of its reasoning, whenever it identifies a Key Function.

function; and the IT function (if any).

For these purposes:

- a) a Function is, “*within a system of governance, an internal capacity to undertake practical tasks*”;
- b) the system of governance “*includes the risk-management function, the compliance function, the internal audit function and the actuarial function*”; and
- c) the Key Functions are:
- i. “*the risk-management function*”;
  - ii. “*the compliance function*”;
  - iii. “*the internal audit function*”;
  - iv. “*the actuarial function*”;
  - v. “*the function of effectively running the firm*” - this is likely to include the members of (1) the (re)insurer’s board; (2) the (re)insurer’s parent’s board; and (3) the board of any other group company, if they (will) exercise the “*Group Entity Senior Insurance Management Function*” (when it comes into force on 7 March 2016 – see below); and
  - vi. “*any other function which is of specific importance to the sound and prudent management of the firm*” – i.e. a Function that:
    - i. is essential for the proper functioning of the (re)insurer or group;
    - ii. assumes material or complex financial market risk or material credit risk;
    - iii. needs a competence that is difficult to replace; or
    - iv. could seriously threaten the interests of the (re)insurer, its group, or its policyholders, if it fails, or it is compromised.  
Examples might include: the investment function; the claims management function; the reinsurance

**Rule 2:** A (re)insurer must have a Governance Map.

A Governance Map is a document that includes:

- a) a list of the (re)insurer’s Key Functions, highlighting those that “*amount to effectively running the firm*”;
- b) the names of those who “*effectively run the firm*”, or are responsible for other Key Functions;
- c) a summary of the significant responsibilities allocated to each of these people;
- d) (where a responsibility is allocated to more than one person) details of how those responsibilities are shared;
- e) reporting lines, and lines of responsibility, for each of the people in (b); and
- f) details of (i) how the (re)insurer’s management and governance arrangements fit with those of its group; (ii) the extent to which the (re)insurer’s management and governance arrangements are provided by, or shared with, members of its group; and (iii) reporting lines, and lines of responsibility, into other parts of the group

**Rule 3:** A (re)insurer must update its Governance Map (a) every quarter; and (b) when something significant changes. If the latter applies, the relevant part of the map must be copied to the PRA

### ***Fitness and propriety***

**Rule 4:** A (re)insurer must ensure that every person who performs a Key Function is fit and proper at all times.

Before a (re)insurer can decide that a person is fit and proper, it must:

- a) be satisfied that he:
- i. has the personal characteristics;
  - 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 him to perform his role effectively, in accordance with relevant regulatory requirements; and to enable the sound and prudent management of the (re)insurer; and

- a) consider his past business conduct.

### **Notifications**

**Rule 5:** If the identity of a Key Function Holder changes, the (re)insurer must tell the PRA, and give it:

- a) all of the information needed to assess whether the relevant person is fit and proper; and
- b) a summary of the significant responsibilities given to that person;

as soon as reasonably practicable after his appointment, using the PRA's "key function holder notification form", and by post or by e-mail, unless:

- c) the new Key Function Holder is to be approved by the PRA to perform a SIMF – if he is, the (re)insurer should use the "SIMF form", the "scope of responsibilities form", and the ONA system instead; or
- d) the new Key Function Holder is to be approved by the FCA to perform an FCA Controlled Function – if he is, the "key function holder notification form" is not required, if the fitness and propriety information and a "scope of responsibilities form" are included in the FCA application.

For these purposes a Key Function Holder is a "person responsible for discharging a Key Function".

Note: Rule 5 does not apply to "[a], a person who is a key function holder as at 1 January 2016"; "[b] a key function holder who is seeking [an approval that continues to have effect on and after 7 March 2016]"; or "[c] a "New SIMF Applicant" – i.e. "a key function holder (other than a grandfathering key function holder) [in respect of whom a (re)insurer] submits an application for a [SIMF] prior to [7 March 2016]"

**Rule 6:** if a (re)insurer becomes aware of information which is material to the assessment of a current or former Key Function Holder's fitness and propriety, it must tell the PRA as soon as practicable.

**Rule 7:** if a (re)insurer replaces a Key Function Holder because it believes he can no longer be regarded as fit and proper, it must tell the PRA as soon as practicable.

### **Before 8 February 2016:**

**Rule 1:** A (re)insurer must submit a Grandfathering Notification to the PRA, using Form K and the ONA system, before 8 February 2016.

The Grandfathering Notification must:

- a) name the (re)insurer's controlled function holders; and the people in respect of which it has an outstanding controlled function holder application(s); and
- b) specify:

- i. the relevant existing controlled function for every approved person, and every applicant; and
- ii. the equivalent SIMF(s) and FCA Function(s) (if any) to be performed by each of these people,

for the period beginning on 7 March 2016.

In many cases, this will be enough to bring existing controlled function holders into the new regime.

The following table shows how the existing controlled functions will map into the new, equivalent PRA SIMFs and FCA Functions:

Existing PRA or FCA Controlled Function	Equivalent PRA SIMF	Equivalent FCA Function
Director (CF1)	CFO (SIMF2) CRO (SIMF4) Head of Int. Audit (SIMF5) Group Entity Senior Insurance Manager (SIMF7) Chief Actuary (SIMF20) Chief Under-writing Officer (SIMF22)	FCA Director (CF1)
Non-Executive Director (CF2)	Group Entity Senior Insurance Manager (SIMF7) Chairman (SIMF9) Chair of Risk Committee (SIMF10) Chair of Audit Committee (SIMF11) Chair of re-muneration committee (SIMF12) Senior Ind. Director (SIMF14)	Chair of the Nomination Committee (CF2a) Chair of the With-profits Committee (CF2b)
Chief Executive (CF3)	Chief Executive (SIMF1)	
Actuary (CF12)	Chief Actuary (SIMF20)	
With-profits Actuary (CF12A)	With-Profits Actuary (SIMF21)	
Systems and Controls (CF28)	CFO (SIMF2) CRO (SIMF4) Head of Int. Audit (SIMF5)	
Significant management (CF29)	Group Entity Senior Insurance Manager (SIMF7) Chief Actuary (SIMF20) Chief Under-writing Officer (SIMF22)	

**Rule 2:** If a controlled function holder, or applicant, will perform a non-equivalent SIMF on or after 7 March 2016, the (re)insurer must submit a SIMF application, instead of a Grandfathering Notification, for that individual.

b) the controlled functions will be:

**From 7 March 2016:**

The controlled function holder regime will change subtly on 7 March 2016, so that:

- a) a (re)insurer will have to “*take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by [the (re)insurer] in relation to the carrying on by [it] of a regulated activity, unless that person is acting in accordance with an approval given by the appropriate regulator*”; and

Type	CF	Description
<i>FCA governing functions</i> <sup>1</sup>	1	Director
	2a	Chair of the nomination committee <sup>2</sup>
	2b	Chair of the with-profits committee <sup>3</sup>
<i>PRA governing functions</i>	1	Director
	2	Non-Executive Director
	3	Chief Executive
<i>FCA required functions</i>	10	Compliance Oversight
	11	Money Laundering Reporting
<i>PRA required functions</i>	12	Actuarial
	12A	With-profits actuary
<i>PRA systems and controls function</i>	28	Systems and Controls
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<i>FCA customer dealing function</i>	30	Customer

In addition, a (re)insurer will be required to comply with:

- a) Rules 1, 2, 3, 4, 6 and 7 in the “*From 1 January 2016*” section (above)<sup>4</sup>; and
- b) the additional Rules described below.

### ***Allocation of responsibilities***

**Rule 1:** A (re)insurer must allocate each of:

<sup>1</sup> If the person is approved to carry out a PRA controlled function and the conditions in SUP 10A.11.12R are met, the FCA function will be absorbed into the PRA function, so only PRA approval will be required.

<sup>2</sup> This will only apply if (a) the (re)insurer has a nomination committee; and (b) the comments in footnote 1 do not apply.

<sup>3</sup> This will only apply if (a) the (re)insurer has a with-profits committee; and (b) the comments in footnote 1 do not apply.

<sup>4</sup> Note that Rule 5, from “*From 1 January 2016*” does not apply. Rule 6 from “*From 7 March 2016*” applies instead.

- a) the first nine SIMR Prescribed Responsibilities (listed below) to one or more of the people who have been approved as a controlled function holder by (1) the PRA, to perform a SIMF; or (2) (in relation to a “Relevant Senior Management Function” only), the FCA; and
- b) the 10<sup>th</sup> and 11<sup>th</sup> SIMR Prescribed Responsibilities to one or more of the non-executive directors who perform a SIMF or an “FCA Governing Function” at that (re)insurer.

For these purposes:

- a) the SIMR Prescribed Responsibilities will be – responsibility for:
  - i. ensuring that every person who performs a Key Function is fit and proper;
  - ii. leading the development of the firm’s culture by the governing body as a whole;
  - iii. overseeing the adoption of the firm’s culture in the day-to-day management of the firm;
  - iv. the production and integrity of the firm’s financial information and regulatory reporting;
  - v. management of the allocation and maintenance of the firm’s capital and liquidity;
  - vi. responsibility for the development and maintenance of the firm’s business model by the governing body;
  - vii. performance of the firm’s ORSA;
  - viii. leading the development, and monitoring the effective implementation, of policies and procedures for the induction, training and professional development of all members of the firm’s governing body;
  - ix. monitoring effective implementation of policies and procedures for the induction, training and professional development of all of the firm’s other Key Function Holders;

- x. oversight of the independence, autonomy and effectiveness of the firm's policies and procedures on whistleblowing; and
  - xi. overseeing the development and implementation of the firm's remuneration policies and practices;
- b) The Relevant Senior Management Functions will be (where applicable):
- i. (CF1) Director;
  - ii. (CF2A) Chair of the Nomination committee;
  - iii. (CF2B) Chair of the With-Profits committee;
  - iv. (CF3) Chief Executive;
  - v. (CF10) the Compliance Oversight function; and
  - vi. (CF28) the Systems and Control function;
- c) The Significant Influence Management Functions / SIMFs will be (where applicable):
- i. (SIMF1) the Chief Executive;
  - ii. (SIMF2) the Chief Financial Officer;
  - iii. (SIMF4) the Chief Risk Officer;
  - iv. (SIMF5) the Head of Internal Audit;
  - v. (SIMF7) the Group Entity Senior Insurance Manager, which is "*the function of having a significant influence on the management or conduct of one or more aspects of the affairs of a [(re)insurer] in relation to its regulated activities, (other than in the course of the performance of another [SIMF]), and which is performed by a person employed by, or an officer of, (1) a parent undertaking or holding company of a [(re)insurer]; or (2) another undertaking which is a member of the [(re)insurer's] group*" – but only if the person will be responsible for (1) managing one or more aspects of the (re)insurer's affairs, or taking decisions, or participating in the taking of decisions, in connection with a regulated activity; and (2) the relevant management or decision taking might involve a risk of serious consequences for the (re)insurer's business or other interests in the UK;
- vi. (SIMF9) Chairman;
  - vii. (SIMF10) Chair of the Risk Committee;
  - viii. (SIMF11) Chair of the Audit Committee;
  - ix. (SIMF12) Chair of the Remuneration Committee;
  - x. (SIMF14 ) the Senior Independent Director;
  - xi. (SIMF20) the Chief Actuary;
  - xii. (SIMF21) the With-profits Actuary; and
  - xiii. (SIMF22); the Chief Underwriting Officer of a General Insurer or managing agent; and
- d) The FCA Governing Functions will be:
- i. (CF1) Director;
  - ii. (CF2) Non-executive Director; and
  - iii. (CF3) the Chief Executive.
- Note:** although some of the Relevant Senior Management Functions, the Significant Influence Management Functions, and the FCA Governing Functions have the same title, the underlying responsibilities / activities, are sometimes different.
- Rule 2:** A (re)insurer must ensure that its Governance Map includes:
- a) (from 1 January 2016), a summary of the significant responsibilities allocated to every person who effectively runs the firm, or who is responsible for another Key Function; and
  - b) (from 7 March 2016), any SIMR Prescribed Responsibilities that have been allocated to each of these people.



## ***Fitness and propriety***

**Rule 3:** when a (re)insurer considers whether a person is fit and proper it must consider:

- a) (from 1 January 2016), his past business conduct; and
- b) (from 7 March 2016), whether he performs his Key Functions in accordance with the relevant Conduct Standards.

**Rule 4:** A (re)insurer must require:

- a) a person performing a Key Function, to observe the Individual Conduct Standards (listed below);
- b) a Key Function Holder, to observe the Individual Conduct Standards and the Senior Insurance Manager Conduct Standards (listed below); and
- c) a Notified Non-Executive Director, to observe the Individual Conduct Standards and the 3<sup>rd</sup> and 4<sup>th</sup> Senior Insurance Manager Conduct Standards (listed below).

A Notified Non-Executive Director is “a non-executive director of a firm who is not [a controlled function holder] in relation to that firm”.

An individual that is required to comply with the Individual Conduct Standards must:

- a) act with integrity;
- b) act with due skill, care and diligence; and
- c) be open and co-operative with the regulators.

An individual that is required to comply with the Senior Insurance Manager Conduct Standards must:

- a) take reasonable steps to ensure that the business of the firm for which he is responsible (i) is controlled effectively; and (ii) complies with the relevant requirements and standards of the regulatory system;
- b) take reasonable steps to ensure that any delegation of his responsibilities is to an appropriate person, and that he oversees the discharge of the delegated responsibility effectively;

- c) disclose appropriately any information of which the FCA or PRA would reasonably expect to have notice; and
- d) when exercising his responsibilities, 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.

**Rule 5:** When a (re)insurer decides whether a person is fit and proper to be appointed as a SIMF Holder or a Notified Non-Executive Director, it must:

- a) obtain (i) the fullest criminal conviction and criminal record certificate(s) it can lawfully request; and (ii) the fullest information it can lawfully request under equivalent overseas legislation (if he has lived or worked outside the UK for a material period in the last five years);
- b) obtain at least five years’ worth of references; and
- c) (when it asks for a reference from a PRA or FCA authorised person), ask for full disclosure about all matters that are relevant to a fitness and propriety assessment.

(Rule 5 does not apply to a (re)insurer in respect of a person who will be / has been approved to perform a SIMF as a result of a Grandfathering Notification.)

## ***Applications and Notifications***

**Rule 6:** A (re)insurer must make a SIMF approval application to the PRA **before** a person begins to carry out the relevant SIMF, using (a) “Long Form A”, “Short Form A”, or “Form E” (as the case may be); (b) a “scope of responsibilities form”; and (c) the ONA system.

**Rule 7:** A (re)insurer must give the PRA:

- a) all of the information needed to assess whether each of its New SIMF Applicants is fit and proper; and
- b) a summary of the significant responsibilities given to each of these individuals;

**before** the relevant individual begins to begin to carry out the relevant SIMF, using whichever form is required for the relevant

SIMF approval application, and a “*scope of responsibilities form*”.

**Rule 8:** A (re)insurer must have one or more people performing each of:

- a) the CEO SIMF (SIMF1);
- b) the CFO SIMF (SIMF2); and
- c) the Chairman SIMF (SIMF9).

**Before 7 September 2016:**

**Rule 1:** A (re)insurer must submit a “*scope of responsibilities form*” to the PRA in respect of each of its Grandfathering Key Function Holders, by 7 September 2016.

**Rule 2:** A (re)insurer must give the PRA:

- a) all of the information needed to assess whether each of its Transitional Key Function Holders, who is not a Grandfathering Key Function Holder or a New SIMF Applicant, is fit and proper; and
- b) a summary of the significant responsibilities given to each of these individuals;

by sending the “*key function holder notification form*” to the PRA by e-mail or post by 7 September 2016.

(This guide is also available with cross-references into the new FCA and PRA SIMF rules. To obtain your copy, please contact: [cfinney@cooley.com](mailto:cfinney@cooley.com))