



The Senior Managers and Certification Regime for Insurers

How the regime will affect your
business and what to do next



Overview

The Senior Managers and Certification Regime (“SMCR”), which currently governs the appointment, responsibilities and conduct of senior personnel at banks and some dual-regulated investment firms, is now being extended to all types of firm. The SMCR will take effect for insurers from 10 December 2018, with the rules being extended to other types of firms from 9 December 2019.

Insurers are already subject to the broadly similar Senior Insurance Managers Regime (“SIMR”), and arguably have a head start on compliance compared to other entity types. However, insurers will become subject to a significant number of new requirements under the SMCR, including the new certification regime and a new duty of responsibility. Insurers will also need to seek approval for additional senior management functions and allocate new prescribed responsibilities. Given this, it is important that insurers set aside sufficient resource to implement the new regime.

The SMCR will also be relevant to insurance intermediaries and other authorised entities within insurance groups. Such entities will need to make significant changes to their governance structures, compliance and HR processes and submit additional documentation to the FCA. Our note on the application of the SMCR to FCA authorised firms that are not insurers (including insurance intermediaries) is available on request.

The PRA¹ and FCA² have published near-final draft rules for the SMCR. The FCA has also issued a guide to the regime for firms (see key sources section below). Firms should note that, as part of the releases in July 2018, there is now a significant amount of new guidance which has been made available by the regulators. This will need to be considered carefully by firms seeking to comply with the regime.

1 PS 15/18 Strengthening individual accountability in insurance: Extension of the Senior Managers and Certification Regime to insurers (July 2018)

2 PS 18/15 Extending the SMCR to insurers - Feedback to CP 17/26 and CP 17/41 and near-final rules (July 2018)



Key changes for insurers

Insurers should be aware of the following key changes to the rules which apply to them as a result of the extension of the SMCR. Additional rules apply to “large firms” which meet certain quantitative thresholds.



Senior Managers Functions (“SMFs”)

Under the current SIMR, insurers are required to ensure that persons performing “Senior Insurance Management Functions” (“SIMFs”) are approved by the PRA. Insurers are also subject to the FCA’s Approved Persons regime, and therefore have persons approved to undertake FCA controlled functions.

Under the SMCR, the concept of a SIMF will be replaced by “Senior Management Function” (“SMF”). All of the existing PRA SIMFs will convert into SMFs. In addition to this, the FCA and PRA will introduce a number of new SMFs. These are as follows:

- SMF 3: Executive Director.
- SMF 18: Other Overall Responsibility (This will involve the firm identifying each of its activities, business areas and management functions and ensuring that the most senior person responsible for each, if not already approved for another SMF, is approved under this function. The FCA has clarified that the overall responsibility responsibility function is likely to apply to senior managers as the exception and not as the norm. It will only apply where a person has overall responsibility and does not hold a different senior management function.)

- SMF 16: Compliance Oversight.
- SMF 17: Money Laundering Reporting Officer.
- SMF 13: Chair of Nominations Committee (non-executive).
- SMF 15: Chair of the With-Profits Committee or the person(s) responsible for the with-profits advisory arrangement (non-executive).
- SMF 24: Chief Operations Officer, which will apply to the person(s) responsible for operations and technology.
- SMF 6: Head of Key Business Area function, which will apply to the individuals who are responsible for large business areas or divisions within a firm meeting certain quantitative thresholds.

The FCA Approved Persons regime will cease to apply. Some existing controlled functions will be replaced with corresponding SMFs (e.g. CF10 Compliance Oversight will be replaced with SMF16). Persons holding such functions now would convert automatically when the new regime is introduced, although it may be necessary to submit a conversion notification to the regulator. Other functions do not have a replacement (e.g. CF30 customer-facing function), and persons performing such functions will not need to continue to be approved.

New “prescribed responsibilities”

Under the current SIMR, firms are required to allocate a number of “prescribed responsibilities” amongst persons holding SIMFs.

Under the SMCR, there will be several new prescribed responsibilities which firms will need to allocate amongst the SMFs. These include the following.

- Firm’s performance of its obligations under the Code of Conduct (COCON) (in terms of training and regulatory reporting) (**FCA only**);
- Firm’s responsibilities and procedures relating to financial crime (**FCA only**);
- Compliance with CASS (**FCA only**);
- Senior Managers Regime (**FCA and PRA**);
- Certification Regime (**FCA and PRA**); and
- Responsibilities Map (**FCA and PRA**).

New Duty of Responsibility

Under the SMCR, SMFs will be subject to a “Duty of Responsibility”. If a firm breaches a regulatory requirement, the regulator can take action directly against the SMF responsible for the area relevant to the breach if the regulator can show that the SMF holder had failed to take reasonable steps to prevent or stop the breach. This is an entirely new requirement for insurers.

Certification Regime

This is likely the most significant change to governance processes required under the SMCR. In addition to SMFs which are persons who need to be approved by the regulators, the SMCR requires persons performing “certification functions” to be “certified” as fit and proper by the firm. This will require the firm to undertake the relevant fit and proper checks on such persons and self-certify that they are “fit and proper” to perform the relevant functions on an annual basis.

The nature of these checks will depend on the particular role and the FCA has indicated it is possible that a junior member of staff may be certified as fit and proper on the basis that they are appropriately supervised.

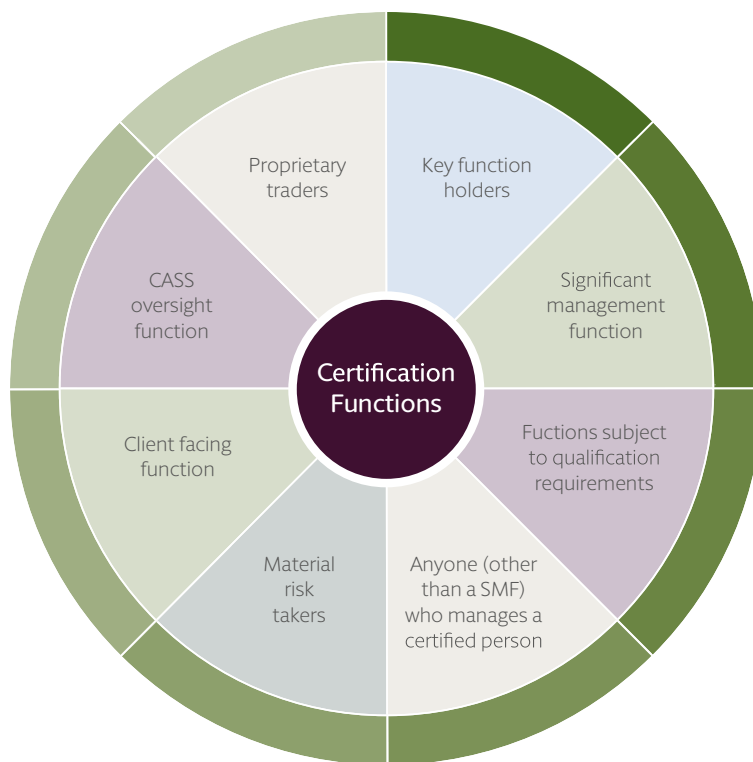
The FCA is currently consulting on a proposal to introduce a new directory which will cover more individuals than would be detailed in the Financial Services register. It is expected to cover:

- all persons holding a certified function under the regime; and
- directors which are not SMF holders, including non-executive directors.

Firms will need to be aware that they will be required to notify specified information about these individuals to the regulator such as their workplace, qualifications and regulatory sanctions—and that this information will be publicly accessible. Firms would also be responsible for providing timely and accurate updates to this information.

Depending on a firm’s business and governance structure, a firm might have determined that a significant number of members of staff would be within the certification regime. Such firms should note that, under the current proposals, these staff will need to be listed on the directory and steps will need to be taken to ensure that their details are kept up to date.

The current proposals suggest that there will be at least the following “certification functions” set out in the diagram below.



Conduct rules

Under the SMCR, a much wider range of persons will become subject to the Conduct Rules and standards imposed by the PRA and the FCA. In particular, the key difference is that certain rules will become applicable to:

- persons covered by the certification regime;
- all employees (unless they are deemed to be “ancillary”).
Ancillary employees are employees who do not perform a role specific to financial services and can include persons such as receptionists and catering staff.

Other rules

Firms should be aware that there are a number of other rules that will be introduced at the same time as the introduction of the SMCR. For example, there are additional rules and guidance from the FCA on allocating certain functions and roles. There are also new policies that will be required under the rules, in particular a handover policy for SMF roles.

Overview of the SMCR



Key Sources

Please see below for the list of key materials for insurers.

- The Senior Managers and Certification Regime: Guide for insurers (July 2018), www.fca.org.uk/publication/policy/guide-for-insurers.pdf
- PS 18/15 Extending the SMCR to insurers - Feedback to CP 17/26 and CP 17/41 and near-final rules (FCA July 2018), www.fca.org.uk/publication/policy/ps18-15.pdf
- PS18/16 Final Guidance: the Duty of Responsibility for insurers and FCA solo-regulated firms (July 2018), www.fca.org.uk/publication/policy/ps18-16.pdf
- CP 18/19 Introducing the Directory (July 2018), www.fca.org.uk/publication/consultation/cp18-19.pdf
- PS 15/18 Strengthening individual accountability in insurance: Extension of the Senior Managers and Certification Regime to insurers (July 2018), www.bankofengland.co.uk/prudential-regulation/publication/2018/strengthening-individual-accountability-in-insurance-extension-of-the-smcr-to-insurers

Next steps for firms

The SMCR will introduce a number of substantial changes for insurers, and firms should plan to set aside sufficient resource to implement these changes. Firms could consider taking the following next steps to implement the regime:

- Create a project plan tailored for the relevant firm. As not all of the requirements apply to all types of entity, firms should start by confirming the requirements that are relevant to them.
- Complete a mapping exercise to identify any new SMFs and to allocate the new prescribed responsibilities.
- Update governance maps (soon to be responsibility maps) and scope of responsibility documents (soon to be statements of responsibility) to reflect mapping and new rules and guidance.
- Review the impact of the new regime on internal controls and procedures. In particular, there will be a need to ensure there are procedures to cover:
 - the maintenance of responsibility maps;
 - handover arrangements for persons moving into and out of Senior Manager roles;
 - assessment procedures for Senior Managers and Certification Staff; and
 - HR and disciplinary procedures.
- Senior Managers may want to negotiate their individual Statements of Responsibility.
- Senior Managers may also want to establish arrangements to ensure that they are able to obtain assurance regarding the adequacy of the performance of functions falling within the scope of their Statements of Responsibility, given the duty of responsibility (which could lead to changes in arrangements for audit, internal risk reviews, and the production and dissemination of management information).
- Prepare any relevant submissions to the regulator for new SIMFs and completing conversion notifications if required.



How we can help

Our team has experience advising a range of authorised entities in this area, including on the extension of the SMCR specifically. We can provide practical guidance on implementation for your firm, and insight into market-standard practices.

We are able to flexibly support you to reflect your firm's business needs: from running your entire implementation project using a mix of our legal and consulting offering, providing legal advice on the key requirements for you to implement, or via template documentation to help you implement your own project.

Please contact us if you would like more information on how we can help you.

Our financial institutions team

Our cross-border, multidisciplinary team provides the insight you need, wherever you need it.

We work across all major market sectors, including retail and investment banks, insurers, intermediaries, peer to peer lenders, FinTech companies, alternative lenders, asset managers, infrastructure providers, as well as industry bodies and regulators. This means we bring a complete market view to your projects.

We help our clients deal with the increasingly varied and complex challenges presented by the UK and European regulatory bodies. We have acted for all sides (including authorities, governments, investors, and clients), and therefore can see the issues from all perspectives. Strong relationships with local, national,

and supranational regulatory bodies mean we can navigate regulations to find solutions or lobby for change where none can be found.

Our team is poised at the cutting edge of the industry and regularly help our clients navigate through the newest and often most complex regulatory developments. Through our thought leadership programme, our industry events and highly regarded industry publications we are providing the industry with some of the most topical information and advice.

Because you work globally, so do we – with teams on the ground in major financial hubs and offices in the emerging economies.

Our financial regulatory consulting team

Our financial service regulatory consulting service works hand-in-hand with our financial services team. Together we can provide a range of services; from guiding you through regulatory application processes to delivering comprehensive regulatory compliance projects, from initial advice to implementation.

We build teams drawn from former regulators, senior compliance and risk professionals, and experienced project managers to work with you at each stage of a project's life cycle.



Selected experience

- Advising an insurer on its project for the implementation of the upcoming SMCR.
- Providing advice on the SMCR as it applies to banks.
- Providing advice to an entity which may become subject to the extended SMCR when it applies.
- Advising various insurers on the projects for the implementation of and on-going compliance with the SIMR. This included advising on all aspects of compliance from formulating and helping update policies and procedures, developing governance maps and statements of notifications of board approvals from the regulators and answering questions on processes.
- Advising a UK insurer on a review of its entire internal control environment, including the structure of its board, the composition of its governing committees (including Executive Management Committee, Audit Committee and Risk Management Committee) and the effectiveness of its control functions.
- Advising a UK insurer on its intragroup arrangements and whether these are appropriate given the SIMR and the SMCR
- Conducting an extensive review of the adequacy of the governance and systems and controls requirements of a UK insurance company, with the provision of recommendations for improvement.
- Conducting a “shadow s166” review for an insurance group in preparation for a potential Skilled Person’s review into governance arrangements and assisting the group to deal with the implementation of the Skilled Person’s review.
- Advising two large UK retail banking groups on their strategies for responding to the PRA and FCA’s consultation on the Senior Managers Regime as it applies to banks.
- Advising various financial institutions on Approved Persons issues, including applications for approval, removal of Approved Persons and notifications of Approved Persons-related matters to the UK regulators.
- Advising various financial institutions in the UK on the adequacy of their governance arrangements either in advance of, or following, regulatory supervision visits or Section 166 Skilled Persons Reviews.
- Advising various clients on the application of and compliance with the Remuneration Codes including advice on which codes apply, the level of compliance required, the application of proportionality, the introduction of new remuneration arrangements and the application of the Code to various overseas group personnel.

Key contacts



Michael Thomas
Partner, Financial Services
T +44 20 7296 5081
michael.thomas@hoganlovells.com



Elaine Penrose
Partner, Regulatory Investigations and Enforcement
T +44 20 7296 2713
elaine.penrose@hoganlovells.com



Anahita Patwardhan
Associate, Financial Services
T +44 20 7296 5470
anahita.patwardhan@hoganlovells.com



Stefan Martin
Partner, Employment
T +44 20 7296 2751
stefan.martin@hoganlovells.com



Philip Parish
Partner, Regulatory Investigations and Enforcement
T +44 20 7296 2680
philip.parish@hoganlovells.com



Steve Murphy
Senior Director, Financial Services Regulatory Consulting
T +44 20 7296 5132
steve.murphy@hoganlovells.com



Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh
Rio de Janeiro
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar
Warsaw
Washington, D.C.
Zagreb

Our offices
Associated offices

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2018. All rights reserved. 1023325_0718