

**PRA RULEBOOK: SOLVENCY II FIRMS, NON SOLVENCY II FIRMS, NON-AUTHORISED  
PERSONS: LLOYD'S INSTRUMENT (NO. 2) 2015**

**Powers exercised**

- A. The Prudential Regulation Authority ("PRA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 137G (the PRA's general rules);
  - (2) section 137T (general supplementary powers);
  - (3) section 213(1) (the compensation scheme);
  - (4) section 316(1) (direction by a regulator);
  - (5) section 317 (the core provisions); and
  - (6) section 318 (exercise of powers through Council).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Solvency II Firms, Non Solvency II Firms, Non-Authorised Persons: Lloyd's Instrument (No. 2) 2015**

- D. The PRA makes the rules and amendments in the Annexes to this instrument.

**Commencement**

- E. This instrument comes into force on 1 January 2016.

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms, Non Solvency II Firms, Non-Authorised Persons: Lloyd's Instrument (No. 2) 2015.

**By order of the Board of the Prudential Regulation Authority**

10 December 2015

Annex A

Part

## **LLOYD'S: ACTUARIES, AUDITORS AND FSCS**

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This Part is deleted in its entirety.

**Annex B**

In this Part, new text is underlined and old text struck through.

Part

**LLOYD'S**

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**Chapter content**

1. APPLICATION AND DEFINITIONS
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4. PROVISION OF INFORMATION BY MANAGING AGENTS
5. INSURANCE RECEIVABLES TO BE CARRIED TO TRUST FUNDS
6. AMENDMENTS TO BYELAWS, TRUST DEEDS AND STANDARD FORM LETTERS OF CREDIT AND GUARANTEES
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9. FORMER UNDERWRITING MEMBERS
10. SOLVENCY II REGULATIONS
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## 1 APPLICATION AND DEFINITIONS

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1.1 Except in 11 and uUnless otherwise stated, this Part applies to:

- (1) in accordance with Insurance General Application 3, the *Society*; and
- (2) in accordance with Insurance General Application 3, *managing agents*, where specified.

1.2 In this Part, the following definitions shall apply:

*capacity transfer market*

means any method of transferring capacity in *syndicates*, including capacity auctions, bilateral arrangements, capacity offers, minority buy-outs and conversion schemes.

*insurance business*

means the *regulated activities of effecting contracts of insurance or carrying out contracts of insurance written at Lloyd's.*

*Lloyd's member's contribution*

means assets:

- (1) provided to a *managing agent* in response to a cash call; or
- (2) held by the *Society* as *funds at Lloyds*.

*underwriting agent*

means a *firm* permitted by the *Council* to act as an underwriting agent at Lloyd's.

## 2 SPECIAL PROVISIONS FOR LLOYD'S

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2.1 Neither the *Society* nor *managing agents* may permit a *member* to carry on any *insurance business*, except as a participant on one or more *syndicates*.

2.2 The *Society* must ensure that all participants in the Lloyd's market are made aware of their obligations under the Solvency II Firms Sector of the *PRA* Rulebook.

2.3 The *Society* must establish and maintain effective arrangements to monitor and manage risk arising from:

- (1) conflicts of interest (including in relation to (2) to (4));
- (2) inter-*syndicate* transactions, including *reinsurance to close* and *approved reinsurance to close*;
- (3) related party transactions; and
- (4) transactions between *members* and itself.

## 3 APPROVED REINSURANCE TO CLOSE

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3.1 Notwithstanding that the liability of a reinsured *member* to a *policyholder* is unaffected by an *approved reinsurance to close* for the purposes of the Solvency II Firms Sector of the *PRA* Rulebook:

- (1) for an *approved reinsurance to close* which is not to a *subsidiary undertaking* of the *Society*:
- (a) a *contract of insurance* reinsured under an *approved reinsurance to close* must be treated as if the reinsuring *member* and not the reinsured *member* had effected the original *contract of insurance*; and
- (b) any payment received by a *member* as consideration for or in connection with an *approved reinsurance to close* must be treated as a *Lloyd's member's contribution* and not as *premium* or as a *reinsurance recovery*.
- (2) for an *approved reinsurance to close* to a *subsidiary undertaking* of the *Society*, a *contract of insurance* reinsured under that *approved reinsurance to close* must be treated as if the reinsured *member* had not effected the original *contract of insurance* but:
- (a) for the purposes of the calculation of the Lloyd's *SCR*, *general insurance business* carried on by *members* and *former underwriting members* which has been reinsured to a *subsidiary undertaking* of the *Society* under an *approved reinsurance to close* must be treated as reinsured to a third party; and
- (b) for the purposes of calculating the *SCR* of any *subsidiary undertaking* of the *Society* which is a *UK Solvency II firm*, the *approved reinsurance to close* must be treated as a *reinsurance*.

#### **4 PROVISION OF INFORMATION BY MANAGING AGENTS**

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- 4.1 A *managing agent* must, as soon as possible, give the *Society* any information the *managing agent* has concerning material risks to *funds at Lloyd's* or *central assets*.
- 4.2 A *managing agent* need not comply with 4.1 if the *managing agent* knows that the *Society* already has the relevant information.

#### **5 INSURANCE RECEIVABLES TO BE CARRIED TO TRUST FUNDS**

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- 5.1 The *Society* must take all reasonable steps to ensure that each *member*:
- (1) executes the appropriate *Lloyd's trust deeds*; and
- (2) carries to the appropriate *Lloyd's trust fund* all amounts received or receivable by the *member*, or on its behalf, in respect of any *insurance business* carried on by it.
- 5.2 The *Society* must carry all amounts it receives on behalf of any *member* in respect of that *member's insurance business* to the appropriate *Lloyd's trust fund*.
- 5.3 A *managing agent* must carry all amounts it receives on behalf of any *member* in respect of that *member's insurance business* to the appropriate *Lloyd's trust fund*.
- 5.4 In complying with 5.1 to 5.3, the *Society* and *managing agents* must take all reasonable steps to ensure that amounts received or receivable by a *member* in respect of *general insurance business* and *long-term insurance business* are carried to separate *Lloyd's trust funds*.

#### **6 AMENDMENTS TO BYELAWS, TRUST DEEDS AND STANDARD FORM LETTERS OF CREDIT AND GUARANTEES**

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- 6.1 The *Society* must, as soon as it is practical to do so, notify the *PRA* of its intention to approve the form of any new *Lloyd's trust deed*.
- 6.2 The *Society* must, as soon as it is practical to do so, notify the *PRA* of its intention to make any amendment which may alter the meaning or effect of any *byelaw*, including:
- (1) any *Lloyd's trust deed*;
  - (2) any standard form letter of credit prescribed by the *Society* from time to time; or
  - (3) any standard form guarantee agreement prescribed by the *Society* from time to time.
- 6.3 The *Society* must provide the *PRA* with full details of:
- (1) the form of any new *Lloyd's trust deed* it intends to approve, as described in 6.1; and
  - (2) any amendments falling within 6.2.
- 6.4 The *Society* must consult interested parties in relation to any new *Lloyd's trust deed* and in relation to any amendment falling within 6.2.
- 6.5 The information provided to the *PRA* by the *Society* under 6.3 must include:
- (1) a statement of the purpose of any proposed amendment or new *Lloyd's trust deed* and the expected impact, if any, on *policyholders*, *managing agents*, *members*, and potential *members*; and
  - (2) a description of the consultation undertaken under 6.4 including a summary of any significant responses to that consultation.

## **7 THE CENTRAL FUND**

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- 7.1 The directions in this Chapter are given under section 318 of *FSMA* (Exercise of powers through Council) for the purpose of achieving the objective specified, as required by section 318(2) of *FSMA*.
- 7.2 The directions given in this Chapter are given in relation to the exercise of the powers by the *Society* in respect of the *Central Fund* and are given with a view to achieving the objective of ensuring that the *Society* in making payments, or in providing any other financial assistance from the *Central Fund*, does so on a basis which does not take into account the amounts of compensation which *policyholders* may receive under the provisions of the *compensation scheme* in respect of *protected claims* against *members*.
- 7.3 The *Society* must, in the exercise of its powers to make payments from the *Central Fund* or to provide other forms of financial assistance from the *Central Fund*, ensure that in calculating and determining the amount of any such payment or the amount of any other financial assistance, it does not take into account the amounts of compensation which *policyholders* may receive under the provisions of the *compensation scheme* in respect of *protected claims* against *members*.

## **8 CAPACITY TRANSFER MARKET**

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- 8.1 The *Society* must make appropriate *byelaws* governing conduct in the *capacity transfer market*.

## **9 FORMER UNDERWRITING MEMBERS**

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- 9.1 The *Society* must ensure that sections 320 to 322 of *FSMA* (Former underwriting members, Requirements imposed under section 320, Rules applicable to former underwriting members) are drawn to the attention of any *person* ceasing to be an *underwriting member* on or after 1 December 2001.
- 9.2 The *Society* must require any *person*, other than a *body corporate*, ceasing to be an *underwriting member* on or after 1 December 2001 to:
- (1) notify the *Society* of any change in his address within one *month* of the change; and
  - (2) in the case of a natural *person*, to make arrangements for the *Society* to be notified in the event of his death.

## 10 SOLVENCY II REGULATIONS

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- 10.1 In complying with requirements imposed on it in the Solvency II Firms Sector of the *PRA* Rulebook, the *Society* must ensure that any relevant provision of the *Solvency II Regulations* is applied in order to achieve the same effect as that provision of the *Solvency II Regulations* would have (that is, conforming with the requirements of the relevant provision) when applied to a *UK Solvency II firm*.
- 10.2 In complying with requirements imposed on it in the Solvency II Firms Sector of the *PRA* Rulebook, a *managing agent* must, in relation to each *syndicate* managed by it and for each *syndicate year*, ensure that any relevant provision of the *Solvency II Regulations* is applied in order to achieve the same effect as that provision of the *Solvency II Regulations* would have (that is, conforming with the requirements of the relevant provision) when applied to a *UK Solvency II firm*.

## 11 AUDITORS AND ACTUARIES DIRECTION

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- 11.1 (1) The *PRA* directs that, with effect from 27 May 2014, Part XXII of *FSMA* (Auditors and Actuaries) applies to the carrying on of *insurance business* by *members* as modified by (2).
- (2) Regulations made by *the Treasury* under section 342(5) and section 343(5) of Part XXII of *FSMA* apply only to *actuaries* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*, in relation to the *long-term insurance business* of that *syndicate*.
- (3) In Part XXII of *FSMA* (Auditors and Actuaries) as applied by this direction:
- (a) a reference to an auditor of an *authorised person* is to be read as including an auditor appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*; and
  - (b) a reference to an *actuary* acting for an *authorised person* is to be read as including an *actuary* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*.

## 12 LLOYD'S AND THE FSCS DIRECTION

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- 12.1 This Chapter applies to the *Society*.
- 12.2 With effect from 15 October 2003, it was directed that the following *core provisions* of *FSMA* apply to the carrying on of *insurance market activities* by *members*:

(1) Part 9A (Rules and guidance) for the purpose of applying the rules in chapters 1 and 3, the Policyholder Protection Part, the FSCS Management Expenses Levy Limit and Base Costs Part, the Management Expenses in respect of Relevant Schemes Part and relevant interpretative provisions; and

(2) Part XV (Financial Services Compensation Scheme).

### **13 LLOYD'S MEMBERS' COMPENSATION SCHEME**

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13.1 This Chapter applies to the *Society*.

13.2 The *Society* must maintain *byelaws* establishing appropriate and effective arrangements to compensate *individual members* and *former members who were individual members if underwriting agents* are unable, or likely to be unable, to satisfy claims by those *members* relating to *regulated activities* carried on in connection with their participation in Lloyd's *syndicates*.