

PRA RULEBOOK: CRR FIRMS: REMUNERATION BUY-OUT RULES 2016

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 137H (general rules about remuneration);
 - (3) section 137T (general supplementary powers); and
 - (4) section 138D(1) (actions for damages).
- 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: CRR Firms: Remuneration Buy-out Rules 2016

- D. The PRA makes the rules in Annex A to this instrument.

Commencement

- E. This instrument comes into force on 1 January 2017.

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Remuneration Buy-out Rules 2016.

By order of the Board of the Prudential Regulation Authority

26 September 2016

Annex A

In this Annex, new text is underlined and deleted text is struck through.

Part

REMUNERATION

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1 APPLICATION AND DEFINITIONS

...

1.3

(1) In this Part, the following definitions shall apply:

...

buy-out

means that part of an *employee's* variable *remuneration*:

(a) agreed in any contracts relating to the commencement of employment with, or provision of services to, a new *firm*; and

(b) the aggregate value of which is less than or equal to such unvested variable *remuneration*:

(i) in the *employee's* contracts relating to the *employee's* employment with, or provision of services to, a previous *firm*, and

(ii) which terminated when the *employee* left employment with, or ceased to provide services to, the previous *firm*.

buy-out notice

means the information provided by a *firm* to a previous *firm* in accordance with 15A.5.

remuneration statement

means a statement provided to an *employee* by a previous *firm* in accordance with 15A.7.

...

private person

has the meaning given by regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001.

...

reduction notice

means a notice provided to a *firm* by a previous *firm* in accordance with 15A.9(3).

...

remuneration requirements

means the requirements in 6 to 4515A.

(2) In this Chapter, references to rules in 15 in relation to a *firm* shall be read on the basis that references to employment with or the provision of services to the *firm*, include references to employment with or the provision of services to a previous *firm* to which the buy-out relates.

2 APPLICATION DATES

2.1 Subject to 2.2 and ~~2.3~~ to 2.4, a *firm* must apply the *remuneration requirements* in relation to:

...

2.4 A *firm* must apply 15A.2 to 15A.11 in relation to any *buy-out* agreed into on or after 1 January 2017.

...

15 REMUNERATION STRUCTURES

~~15.8 A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous employment align with the long term interests of the *firm* including appropriate retention, deferral and performance and clawback arrangements.~~

15A BUY-OUTS

Application

15A.1 This Chapter applies where:

- (3) a *firm* agrees with an *employee* to pay or provide a *buy-out*;
- (4) the *buy-out* relates to employment with, or provision of services to, a previous *firm* that was subject to the *remuneration requirements*; and
- (5) the *employee* was a *material risk taker* in that previous *firm*.

Obligations applicable to a new *firm*

15A.2 A *firm* may only award, pay or provide a *buy-out* to an *employee* if it enters into a contract with the *employee* which enables the *firm*, following receipt of a *reduction notice*, to:

- (1) reduce all or part of the *buy-out* in accordance with 15.22(1)(a) and (c), (2) and (3); and
- (2) recover all or part of the *buy-out* in accordance with 15.23.

15A.3

- (1) A *firm* must ensure a *buy-out* aligns with the long term interests of the *firm* including appropriate retention, deferral, performance and clawback arrangements.
- (2) The duration of retention, deferral, performance and clawback arrangements applied to a *buy-out*, or part of a *buy-out*, must be no shorter than such duration as was applied and remained outstanding in relation to unvested variable *remuneration* awarded by a previous *firm* to the person as an *employee* of that previous *firm*.

[Note: Art. 94(1)(i) of the CRD]15A.4

- (1) A firm must obtain remuneration statements from the employee before agreeing to provide the employee with a buy-out.
- (2) The amount of a buy-out may be no greater than the aggregate amount of unvested variable remuneration referred to in the remuneration statements provided to the firm by the employee.

15A.5

- (1) A firm must, in writing, inform a previous firm ("buy-out notice"):
 - (a) that it has entered into a contract which includes the terms required by 15A.2;
 - (b) of the amount attributable to unvested variable remuneration paid to the employee by that previous firm; and
 - (c) of the duration of retention, deferral, performance and clawback arrangements that would apply to the amount or part of the amount identified in (b).
- (2) Where the buy-out does not include an amount attributable to unvested variable remuneration paid to the employee by a previous firm, (1) does not apply.

15A.6 On receipt of a reduction notice from a previous firm, the firm must reduce, or make all reasonable efforts to recover an amount corresponding to, the buy-out, in the amounts notified to it by the previous firm, before the vesting of the next relevant deferred payment, or in a case where clawback is applicable, within a reasonable period, and in any event, no later than the end of the applicable clawback periods in 15.20(3) and 15.20(4).

Obligations applicable to a previous firm15A.7

- (1) A previous firm must provide its employee or former employee with a statement ("remuneration statement") containing the following information:
 - (a) all periods during which the employee was a material risk taker;
 - (b) the amount of unvested variable remuneration available to be bought out applicable to the periods during which the employee was a material risk taker; and
 - (c) the duration of retention, deferral, performance and clawback arrangements that the previous firm would apply to each amount or part of an amount identified in (b).
- (2) The information in (1) must be provided to the employee or former employee within 14 working days of a request by that employee or former employee.

15A.8

- (1) A previous firm which has received a buy-out notice must, in relation to that former employee, consider whether it would have reduced unvested variable remuneration or required the repayment of an amount corresponding to vested variable remuneration in accordance with the criteria it has set under 15.21 until the end of the last period contained in the remuneration statement it provided to that employee.
- (2) Consideration of any reduction of unvested variable remuneration must only cover reductions for reasons contained in 15.22(1)(a) and (c).

15A.9

- (1) The previous firm must determine the amounts by which it would have:
 - (a) reduced unvested variable remuneration; or
 - (b) required the repayment of an amount corresponding to vested variable remuneration

had the former employee remained in its employment or been providing services and the duration of retention, deferral, performance and clawback arrangements were as notified under 15A.5(c).
- (2) The previous firm must make such determinations fairly and reasonably, including by:
 - (a) providing the former employee with details and reasons for the proposed determination;
 - (b) enabling the former employee to make representations as to why the proposed determination in (a) should not be made; and
 - (c) taking account of those representations in making the determination.
- (3) The previous firm must, in writing, notify the firm and the employee of any amounts determined under (1) no later than 14 working days after it makes its final determination ("a reduction notice").

General15A.10 A firm must not:

- (1) structure any element of an employee's remuneration in a way that could result in remuneration which otherwise would be characterised as part of a buy-out, not being characterised as such; or
- (2) act or fail to act in a way which would otherwise seek to avoid the requirements of this chapter.

15A.11 A contravention of 15A.9(2) by a firm is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to such actions for breach of statutory duty.

16 BREACH OF THE REMUNERATION RULES

16.1 Subject to 16.2 to 16.7, the voiding provisions in 16.9 to 16.13 apply in relation to the prohibitions on *material risk takers* being remunerated in the ways specified in:

- (1) 15.7 (guaranteed variable remuneration);
- (2) 15.17 to 19 (deferred variable remuneration);
- (3) 15.20(2) (performance adjustment – clawback); and
- (3A) 15A.2 (buy-out contract); and
- (4) 16.16 (replacing payments recovered or property transferred).

...

16.16 ...

~~(2) This rule applies only to variable remuneration relating to a performance year to which the contravening remuneration related.~~

(2) This rule applies:

- (a) in the case of a contravention of 15A.4, only to remuneration relating to the commencement of employment with or provision of services for the firm; and
- (b) in any other case, only to variable remuneration relating to a performance year to which the contravening remuneration related.

Part

REMUNERATION

Externally defined glossary terms

Term	Definition source