

PRA RULEBOOK: USE OF SKILLED PERSONS INSTRUMENT 2014

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 166 (Reports by skilled persons); and
 - (4) section 166A (Appointment of skilled person to collect and update information).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) 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.

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

Commencement

- E. This instrument comes into force on 19 June 2014.

Citation

- F. This instrument may be cited as the PRA Rulebook: Use of Skilled Persons Instrument 2014.

By order of the Board of the Prudential Regulation Authority

13 June 2014

Annex A

In the Glossary Part of the PRA Rulebook, insert the following new definition:

skilled person

means a *person* appointed to:

- (1) make and deliver to the *PRA* a report as provided for by section 166 of *FSMA* (Reports by skilled persons); or
- (2) collect or update information as required by the *PRA* under section 166A of *FSMA* (Appointment of skilled person to collect and update information).

Annex B

In this Annex, the text is all new and is not underlined.

Part

USE OF SKILLED PERSONS

Chapter content

1. APPLICATION AND DEFINITIONS
2. COST OF THE SKILLED PERSON'S REPORT
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1 APPLICATION AND DEFINITIONS

1.1 This Part applies to all *firms*.

1.2 In this Part, the following definition shall apply:

relevant requirement

has the meaning specified in section 204A(2) of *FSMA*.

2 COST OF THE SKILLED PERSON'S REPORT

2.1 A *firm* must, including where applicable in complying with the *Fundamental Rules*, give the *PRA* information about the cost of the *skilled person's* report. This includes both an initial estimate of the cost as well as the cost of the completed report.

3 CONTRACT WITH THE SKILLED PERSON

3.1 When a *firm* appoints a *skilled person* the *firm* must, in a contract with the *skilled person*:

- (1) require and permit the *skilled person* during and after the course of their appointment:
 - (a) to cooperate with the *PRA* in the discharge of its functions under *relevant legislation* in relation to the *firm*; and
 - (b) to communicate to the *PRA* information on, or the *skilled person's* opinion on, matters of which they have, or had, become aware in their capacity as *skilled person* reporting on the *firm* in the following circumstances:
 - (i) the *skilled person* reasonably believes, as regards the *firm* concerned:
 - (A) that there is or has been, or may be or may have been, a contravention of any *relevant requirement* that applies to the *firm* concerned; and
 - (B) that the contravention may be of material significance to the *PRA* in determining whether to exercise, in relation to the *firm* concerned, any functions conferred on the *PRA* by or under *relevant legislation*; or
 - (ii) the *skilled person* reasonably believes that the information on, or their opinion on, those matters may be of material significance to the *PRA* in determining whether the *firm* concerned satisfies and will continue to satisfy the *threshold conditions*; or
 - (iii) the *skilled person* reasonably believes that *firm* is not, may not be or may cease to be a going concern;
- (2) require the *skilled person* to prepare a report or collect or update information, as notified to the *firm* by the *PRA*, within the time specified by the *PRA*; and
- (3) waive any contractual or other duty of confidentiality owed by the *skilled person* to the *firm* which might limit the provision of information or opinion by that *skilled person* to the *PRA* in accordance with (1) or (2).

3.2 A *firm* must ensure that the contract it makes with the *skilled person* under 3.1 requires and permits the *skilled person* to provide the following to the *PRA* if requested to do so:

- (1) interim reports;
- (2) source data, *documents* and working papers;
- (3) copies of any draft reports given to the *firm*; and
- (4) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including percentage of work completed, details of time spent, costs to date, and details of any significant findings and conclusions).

3.3 A *firm* must ensure that the contract required by 3.1:

- (1) is governed by the laws of a part of the *UK*;
- (2) expressly:
 - (a) provides that the *PRA* has a right to enforce the provisions included in the contract under 3.1, 3.2 and 3.3(2)(b)-(d);
 - (b) provides that, in proceedings brought by the *PRA* for the enforcement of those provisions, the *skilled person* is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions;
 - (c) (if the contract includes an arbitration agreement) provides that the *PRA* is not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
 - (d) provides that the provisions included in the contract under 3.1, 3.2 and 3.3(2)(a)-(c) are irrevocable and may not be varied or rescinded without the *PRA*'s consent; and
- (3) is not varied or rescinded in such a way as to extinguish or alter the provisions referred to in (2)(d).

3.4 A *firm* must give the *PRA* a copy of the draft contract required by 3.1 before it is made with the *skilled person*.

4 DELIVERY OF THE SKILLED PERSON'S REPORT TO THE PRA

4.1 When a *firm* appoints a *skilled person*, a *firm* must, including where applicable in complying with the *Fundamental Rules*, take reasonable steps to ensure that a *skilled person* delivers a report or collects or updates information in accordance with the terms of the *skilled person's* appointment.

