

PRA RULEBOOK: SOLVENCY II FIRMS: LLOYD'S INSTRUMENT 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); and
 - (3) 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 with the Financial Conduct Authority), 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 the Annex 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: Lloyd's Instrument 2015.

By order of the Board of the Prudential Regulation Authority

17 March 2015

Annex

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

Part

LLOYD'S

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1 APPLICATION AND DEFINITIONS

1.1 Unless 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.

compensation scheme

means the Financial Services Compensation Scheme established under section 213 of *FSMA*.

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*.

protected claim

means a *claim* which is covered by the *compensation scheme*, as defined in rule COMP 5.2.1 R of the *PRA Handbook*.

2 SPECIAL PROVISIONS FOR LLOYD'S

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;
- (4) transactions between *members* and itself.

3 APPROVED REINSURANCE TO CLOSE

- 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

- 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

- 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

- 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

- 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

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

9 FORMER UNDERWRITING MEMBERS

- 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

- 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*.