Powers exercised

A. The Financial Conduct Authority 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 137A (The FCA’s general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 28 September 2018.

Amendments to the Handbook

D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex A to this instrument.

E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

E. This instrument may be cited as the Supervision Manual (Reporting No 9) Instrument 2018.

By order of the Board
27 September 2018
Annex A

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex underlining indicates new text and striking through indicates deleted text

8 Claims handling

... 8.4 Employers’ Liability Insurance

... 8.4.1 R ...

(3) ...

(b) a 'director’s certificate’ are to a statement complying with the requirements in ICOBS 8.4.4R(1)(b) SUP 16.23A:

... (d) a 'qualified director’s certificate’ are to the statement complying with the requirements in ICOBS 8.4.4R(1)(b)(ii) SUP 16.23A.5R; and

Principal obligation to produce an employers’ liability register and supporting documents

8.4.4 R (1) A firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers’ liability insurance, must:

... (b) obtain and submit to the FCA a written statement, by a director of the firm responsible for the production of the employers’ liability register, that to the best of the director’s knowledge the firm in its production of the register is either:

(i) materially compliant with the requirements of ICOBS 8.4.4R(2) and ICOBS 8 Annex 1, including (where necessary) how the firm has used and continues to use its best endeavours in accordance with ICOBS 8 Annex 1.1.4CR, or
(ii) not materially compliant with the provisions referred to in (i), in which case the statement must also set out, to the best of the director's knowledge, the information required by ICOBS 8.4.4AR; and [deleted]

(c) obtain and submit to the FCA a report satisfying the requirements of ICOBS 8.4.4CR, prepared by an auditor satisfying the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6 R, and addressed to the directors of the firm. [deleted]

(1A) For the purposes of ICOBS 8.4.4R(1)(b):

(a) 'materially compliant' means that in relation to at least ninety-nine percent of policies for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information; and

(b) the firm must ensure that the director's certificate includes the description of 'materially compliant' referred to in (a). [deleted]

...

(3) For the purposes of (1)(b) and (c) the director's certificate and report prepared by an auditor must:

(a) relate to the version of the register as at a date no later than 12 months after it is first produced in accordance with (1)(a); and

(b) be obtained and submitted to the FCA within four months of the date in (a). [deleted]

...

8.4.4A R The information referred to in ICOBS 8.4.4R (1)(b)(ii) is:

(1) a description of the ways in which the firm, in its production of the register, is not materially compliant:

(2) the number of policies, in relation to which, either:

(a) the firm is not able to include any information in the register; and/or

(b) information is included in the register but information may be incorrect or incomplete;
in each case as a proportion of the total number of policies required to be included in the register;

(3) where the firm is only practicably able to provide an estimate of the numbers in (2), the basis of each estimate; and

(4) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the firm is taking to ensure that the firm will be materially compliant as soon as practicable. [deleted]

8.4.4B G In relation to the written statement referred to in ICOBS 8.4.4R(1)(b):

(1) ICOBS 8.4.4R(1)(b) does not preclude the relevant director from, in addition, including in the director's statement any of the following as relevant:

(a) if a firm's employers' liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the director considers, to the best of his knowledge, the firm to be compliant in its production of the register;

(b) reasons for the level of any non-compliance; and/or

(c) information relating to policies which are not required to be included in the register;

(2) the statement regarding the firm's level of compliance with requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1, and, in relevant cases, the steps the firm is undertaking to ensure material compliance as soon as practicable, does not alter the underlying requirement that the firm has to comply fully with the relevant requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 (that is, not just to a material extent). So, it is possible that a firm will be able to comply with ICOBS 8.4.4R(1)(b) but continue to not fully comply with the underlying requirements, for example, in respect of the policies falling outside the ninety-nine percent threshold. In relation to these policies, as well as those identified in any qualified director's certificate, the firm will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to this on an ongoing basis. [deleted]

8.4.4C R The report referred to in ICOBS 8.4.4R(1)(c) must:

(1) be prepared on the basis of providing an opinion under a limited assurance engagement confirming whether the auditor has found no reason to believe that the firm, solely in relation to the firm's extraction of information from its underlying records, has not materially complied with the requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 in the production of its employer's liability register.
having regard in particular to the possible errors and omissions referred to in (3) below;

(2) use the description of material compliance as referred to in ICOBS 8.4.4R(1A)(a) adapted as necessary to apply solely to the firm’s extraction of information from its underlying records;

(3) address, in particular, the following risks:

(a) information relating to certain policies issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the firm’s underlying records;

(b) information relating to certain policies in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the firm’s underlying records;

(c) relevant information required to be included in the register, and which is included in the firm’s underlying records, is omitted from, or is inaccurately entered on to, the register; and

(d) information relating to policies which do not provide employers’ liability insurance are included in the register. [deleted]

…

Requirement to make employers’ liability register and supporting documents available

8.4.7 R (1) …

…

(b) the latest director’s certificate prepared in accordance with SUP 16.23A.5R(1) and the latest report prepared by an auditor for the purposes of ICOBS 8.4.4R(1)(c) SUP 16.23A.6R(1), to a tracing office which has obtained information from the firm for the purposes of providing comprehensive tracing information, in accordance with ICOBS 8.4.4R(2)(d), provided that the tracing office has agreed with the firm not to disclose confidential information in the certificate and the report to third parties, save as required by law.

…

…

Updating and verification requirements
8.4.11 R …

(2) A firm producing an employers’ liability register must:

…

(c) update the register, no less frequently than once every three months, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three months prior to the date upon which the register was updated, or such later date as applicable to the firm;

(d) obtain and submit to the FCA a director’s certificate:

(i) no later than twelve months after the date of the most recent director’s certificate, obtained and submitted to the FCA in accordance with ICOBS 8.4.4R(1)(b) or this rule;

(ii) complying with the requirements, and containing one of the statements, set out in ICOBS 8.4.4R(1)(b); and

(iii) in relation to a version of the employers’ liability register dated no more than four months prior to the date of the director’s certificate;

(e) obtain and submit to the FCA a report prepared by an auditor:

(i) no later than twelve months after the date of the most recent report, obtained and submitted to the FCA in accordance with ICOBS 8.4.4R(1)(c) or this rule;

(ii) complying with the requirements set out in ICOBS 8.4.4R(1)(c); and

(iii) in relation to a version of the employers’ liability register dated no more than four months prior to the date of the report; and

(f) make available, in accordance with ICOBS 8.4.7R, the director’s statement in (d) and the report in (e) no later than four months after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

…

Sch 2 Notification requirements

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<thead>
<tr>
<th>Sch 2.1G</th>
<th>Handbook reference</th>
<th>Matters to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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<th><strong>ICOBS 8.4.4R(1)(b), ICOBS 8.4.4R(3), ICOBS 8.4.11R(2)(d)</strong></th>
<th>A statement satisfying the requirements of <strong>ICOBS 8.4.4R(1)(b)</strong></th>
<th>A statement satisfying the requirements of <strong>ICOBS 8.4.4R(1)(b)</strong></th>
<th>Obtaining a statement satisfying the requirements of <strong>ICOBS 8.4.4R(1)(b)</strong></th>
<th><strong>Four months</strong> from the date of the version of the register being commented on in accordance with <strong>ICOBS 8.4.4R(3) or ICOBS 8.4.11R(2)(d)</strong></th>
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<tr>
<td><strong>ICOBS 8.4.4R(1)(c), ICOBS 8.4.4CR, ICOBS 8.4.4R(3), ICOBS 8.4.11R(2)(e)</strong></td>
<td>A report satisfying the requirements of <strong>ICOBS 8.4.4CR</strong></td>
<td>A report satisfying the requirements of <strong>ICOBS 8.4.4CR</strong></td>
<td>Obtaining a report satisfying the requirements of <strong>ICOBS 8.4.4CR</strong></td>
<td><strong>Four months</strong> from the date of the version of the register being reported on in accordance with <strong>ICOBS 8.4.4R(3) or ICOBS 8.4.11R(2)(e)</strong></td>
</tr>
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</table>

...
Annex B

Amendments to the Supervision manual (SUP)

In this Annex underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

16 Reporting requirements

16.1 Application

…

16.1.2 G The only categories of firm to which no section of this chapter applies are:

(1) …

(2) an incoming EEA firm or incoming Treaty firm, unless it is:

(a) a firm of a type listed in SUP 16.1.3R as a type of firm to which SUP 16.6, SUP 16.7A, SUP 16.9, SUP 16.12, or SUP 16.14, or SUP 16.23A applies; or

…

…

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

<table>
<thead>
<tr>
<th>(1) Section(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
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<tr>
<td>…</td>
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<tr>
<td>SUP 16.23</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SUP 16.23A</td>
<td>A firm undertaking the regulated activities in SUP 16.23A.1R, including all incoming EEA firms or incoming Treaty firms (including those providing cross border services and undertaking the same activities)</td>
<td>Entire section</td>
</tr>
</tbody>
</table>
16.3 General provisions on reporting

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

(17) reporting under the Payment Accounts Regulations (SUP 16.22); and
(18) annual financial crime reporting (SUP 16.23); and
(18A) employers’ liability register compliance reporting (SUP 16.23A).

After SUP 16.23 (Annual Financial Crime Report) insert the following new section SUP 16.23A. The text is not underlined.

16.23A Employers’ Liability Register compliance reporting

Application

16.23A.1 R (1) This section applies to any firm required to produce an employers’ liability register in compliance with the requirements in ICOBS 8.4.4R, which is:

(a) a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers’ liability insurance; and
(b) an incoming EEA firm or incoming Treaty firm falling within (a), including those providing cross border services.

(2) In this section:

(a) a “director’s certificate” refers to a statement complying with the requirements in SUP 16.23A.5R(1);
(b) “employers’ liability insurance” includes business accepted under reinsurance to close covering employers’ liability
insurance (including business that is only included as employers' liability insurance for the purposes of this section);

(c) a “qualified director's certificate” refers to the statement complying with the requirements in SUP 16.23A.5R(1)(b);

(d) “materially compliant” has the meaning in SUP 16.23A.5R;

(e) the “register” is the employers’ liability register complying with the requirements in ICOBS 8.4.4R and ICOBS 8 Annex 1;

(f) the “return” is the employers’ liability register compliance return at SUP 16 Annex 44AR; and

(g) “supporting documents” are the director’s certificate and auditor’s report specified in SUP 16.23A.5R and SUP 16.23A.6R.

Purpose

16.23A.2 G ICOBS 8.4.4R requires a firm to produce the register. The register must be produced in compliance with the updating requirements in ICOBS 8.4.11R(2). SUP 16.23A sets out further requirements on the firm to obtain and submit to the FCA a statement that the firm’s production of the register complies with the requirements in ICOBS 8.4.4R, including supporting documents from a director and an auditor. It specifies the time, form and method of providing that information.

Reporting requirement

16.23A.3 R (1) A firm must submit the return annually to the FCA.

(2) The return must be in relation to the register as at 31 March, covering the period of production of the register from 1 April to 31 March.

(3) The return must be submitted online through the appropriate systems made available by the FCA:

(a) between the 1 and 31 August each year;

(b) in the format set out in SUP 16 Annex 44AR; and

(c) any supporting documents must be provided in pdf format.

Content of return and supporting documents

16.23A.4 R The return consists of the information required in the form at SUP 16 Annex 44AR and the supporting documents specified in SUP 16.23A.5R and SUP 16.23A.6R.

Director’s certificate
16.23A.5 R (1) A firm must obtain and submit to the FCA a written statement, by a director of the firm responsible for the production of the register, that, to the best of the director’s knowledge, during the reporting period the firm in its production of the register is either:

(a) materially compliant with the requirements of ICOBS 8.4.4R(2) and ICOBS 8 Annex 1, including (where necessary) how the firm has used and continues to use its best endeavours in accordance with ICOBS 8 Annex 1.1.1CR; or

(b) not materially compliant with the provisions referred to in SUP 16.23A.5R(1)(a), in which case the statement must also set out, to the best of the director’s knowledge, the information required by SUP 16.23A.5R(3).

(2) For the purposes of SUP 16.23A.5R and SUP 16.23A.6R, “materially compliant” means that in relation to at least ninety-nine percent of policies for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information.

(3) The information referred to in SUP 16.23A.5R(1)(b) is:

(a) a description of the ways in which the firm, in its production of the register, is not materially compliant;

(b) the number of policies, in relation to which, either:

(i) the firm is not able to include any information in the register; and/or

(ii) information is included in the register but information may be incorrect or incomplete,

in each case as a proportion of the total number of policies required to be included in the register;

(c) where the firm is only practicably able to provide an estimate of the numbers in SUP 16.23A.5R(3)(b), the basis of each estimate; and

(d) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the firm is taking to ensure that it will be materially compliant as soon as practicable.

(4) The firm must ensure that the director’s certificate includes the description of “materially compliant” referred to in SUP 16.23A.5R(2).
16.23A.5 G (1) In relation to the written statement referred to in SUP 16.23A.5R(1):

(a) SUP 16.23A.5R(1) does not preclude the relevant director from, in addition, including in the director’s statement any of the following as relevant:

(i) if a firm’s employers’ liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the director considers, to the best of their knowledge, the firm to be compliant in its production of the register;

(ii) reasons for the level of any non-compliance; and/or

(iii) information relating to policies which are not required to be included in the register;

(b) the statement regarding the firm’s level of compliance with the requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1, and, in relevant cases, the steps the firm is undertaking to ensure material compliance as soon as practicable, does not alter the underlying requirement that the firm has to comply fully with the relevant requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 (that is, not just to a material extent). So, it is possible that a firm will be able to comply with SUP 16.23A.5R(1) but continue to not fully comply with the underlying requirements, for example in respect of the policies falling outside the ninety-nine percent threshold. In relation to these policies, as well as those identified in any qualified director’s certificate, the firm will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to these on an ongoing basis.

Auditor’s report

16.23A.6 R (1) A firm must obtain and submit to the FCA a report satisfying the requirements of SUP 16.23A.6R(2), prepared by an auditor satisfying the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6R, and addressed to the directors of the firm.

(2) The report referred to in SUP 16.23A.6R(1) must:

(a) be prepared on the basis of providing an opinion under a limited assurance engagement confirming whether the auditor has found no reason to believe that the firm, solely in relation to the firm’s extraction of information from its underlying records, has not materially complied with the requirements in ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 in the production of its employer’s liability register during the reporting period, having regard in
particular to the possible errors and omissions referred to in SUP 16.23A.6R(2)(c) below;

(b) use the description of “material compliance” as referred to in SUP 16.23A.5R(2), adapted as necessary to apply solely to the firm’s extraction of information from its underlying records;

(c) address, in particular, the following risks:

(i) information relating to certain policies issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the firm’s underlying records;

(ii) information relating to certain policies in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the firm’s underlying records;

(iii) relevant information required to be included in the register, and which is included in the firm’s underlying records, is omitted from, or is inaccurately entered on to, the register; and

(iv) information relating to policies which do not provide employers’ liability insurance are included in the register.

16.23A.7 R For the purposes of SUP 16.23A.5R(1) and SUP 16.23A.6R(1) the director’s certificate and report prepared by an auditor must be obtained and submitted to the FCA within the timeframe set out in SUP 16.23A.3R(3)(a) and in the format set out in SUP 16 Annex 44AR.

After SUP 16 Annex 43BG (Guidance notes for completion of the Retirement income flow data return (‘REP015’) and the Retirement income stock and withdrawals flow data return (‘REP016’)) insert the following new Annex SUP 16 Annex 44AR.

[Editor’s note: for the avoidance of doubt SUP 16 Annex 43BG is added by FCA 2017/48 with effect from 30 September 2018.]

16 Annex Employers’ Liability Register compliance return 44AR
After SUP 16 Annex 44AR (Employers’ Liability Register compliance return) insert the following new Annex SUP 16 Annex 44BG.

### 16 Annex 44BG Guidance notes for the completion of Employers' Liability Register compliance return in SUP 16 Annex 44AR

#### Firm details

1. **FRN**

   Enter the *firm* reference number.

2. **Firm name**

   *Enter* the *firm* name as it appears on the Financial Services Register.
Director’s certificate

3 Is the firm materially compliant with ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 in the production of the firm’s employers’ liability registers in the reporting period?

If the firm is materially compliant, select ‘Yes’ and move on to question 4.
If the firm is not materially compliant, select ‘No’ and proceed to answer questions 3.1 to 3.3.

3.1 Please confirm that the director’s certificate contains a description of the ways in which the firm, in its production of the register, is not materially compliant and of the steps, together with relevant timescales, that the firm is taking to ensure that the firm will be materially compliant as soon as practicable. This question relates to the requirement in SUP 16.23A.5R(1)(b).

If an explanation is provided in the director’s certificate or auditor’s report select ‘Yes’.

3.2 How many policies are omitted from the register? (as a proportion of the total number of policies required to be included in the register.)

Enter the percentage of the total number of policies omitted from the register.
If this percentage is an estimate, the basis for estimation should be included in the supporting documents.

3.3 How many policies in the register contain incorrect or incomplete information? (as a proportion of the total number of policies required to be included in the register.)

Enter the percentage of the total number of policies where there is incorrect or incomplete information on the register.
If this percentage is an estimate, the basis for estimation should be included in the supporting documents.

Director’s Certificate upload

4 Please upload a copy of the director’s certificate here in PDF format

[upload functionality]

Auditor’s report

5 Does the auditor’s report confirm the firm is materially compliant with ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 in the production of its employers’ liability registers in the reporting period?

Indicate if the auditor’s report confirms the firm is materially compliant by selecting ‘Yes’.
Where the auditor’s report states the *firm* is not materially compliant select ‘No’.

**Auditor’s report upload**

6 Please upload a copy of the auditor’s report here in PDF format.

[upload functionality]

After SUP TP 1.11 (Payment services and electronic money returns) insert the following new TP SUP TP 1.12.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td>SUP 16.23A.3R(2) R If, at the time SUP 16.23A.3R comes into force, the latest director’s certificate and auditor’s report a <em>firm</em> submitted under the <em>rules</em> replaced by SUP 16.23A.3R related to a version of the register dated 31 March 2018 or earlier, the ‘period of production of the register’ to be covered by the first return that <em>firms</em> must submit under SUP 16.23A.3R(1) is from that date to 31 March 2019.</td>
<td>From 28 September 2018 to 31 August 2019</td>
<td>28 September 2018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>SUP 16.23A.3R(2) R If, at the time SUP 16.23A.3R comes into force, the latest director’s certificate and auditor’s report a <em>firm</em> submitted under the <em>rules</em> replaced by SUP 16.23A.3R related to a version of the register dated 1 April 2018 or later, the ‘period of production of the register’ to be covered by the first return that <em>firms</em> must submit under SUP 16.23A.3R(1) is from that date to 31 March 2019.</td>
<td>From 28 September 2018 to 31 August 2019</td>
<td>28 September 2018</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>