

Chapter 16

Reporting requirements

16.23A Employers' Liability Register compliance reporting

Application

16.23A.1 **R**

This section applies to any *firm* required to produce an employers' liability register in compliance with the requirements in ■ ICOPS 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 ■ ICOPS 8.4.4R and ■ ICOPS 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**

■ ICOPS 8.4.4R requires a *firm* to produce the register. The register must be produced in compliance with the updating requirements in ■ ICOPS 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 ■ ICOPS 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;

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- (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).

- (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.