

Code of Conduct (COCON)

Chapter 1

Application and purpose

Guidance on the role and responsibilities of non-executive directors of SMCR firms

COCON 1 Introduction

COCON 1.1 This annex applies to *non-executive directors* (NEDs) of an *SMCR firm*.

COCON 1.2 This annex covers the role of a NED in performing the roles in (1) to (4), below:

- (1) the role of chair of the board of *directors*;
- (2) the role of chair of the nomination committee;
- (3) the role of chair of any other committee (irrespective of whether performing that role is itself a *designated senior management function*);
- (4) the general NED role.

COCON 1.3 The *FCA's* view of the role of a NED is consistent with the duties of directors included in *UK company law* and the description of the role of a NED in the *UK Corporate Governance Code*.

COCON 2 The general role of a NED

COCON 2.1 The role of a NED performing the general NED role is to:

- (1) provide effective oversight and challenge; and
- (2) help develop proposals on strategy.

COCON 2.2 To deliver this, their responsibilities include:

- (1) attending and contributing to board and committee meetings and discussions;
- (2) taking part in collective board and committee decisions, including voting and providing input and challenge; and
- (3) ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.

COCON 2.3 Other key roles of a NED include:

- (1) scrutinising the performance of management in meeting agreed goals and objectives;
- (2) monitoring the reporting of performance;
- (3) satisfying themselves on the integrity of financial information;
- (4) satisfying themselves that financial controls and systems of risk management are robust and defensible;
- (5) scrutinising the design and implementation of the remuneration policy;
- (6) providing objective views on resources, appointments and standards of conduct; and
- (7) being involved in succession planning.

COCON 3	Role of a NED as chair of the board or a committee
COCON 3.1	<p>Subject to any specific governance arrangements, <i>rules</i> or requirements applicable to the board or particular committees, a NED's responsibility as chair of the board or a committee includes:</p> <ol style="list-style-type: none"> (1) ensuring that the board or committee meets with sufficient frequency; (2) fostering an open, inclusive discussion which challenges executives, where appropriate; (3) ensuring that the board or committee devotes sufficient time and attention to the matters within its remit; (4) helping to ensure that the board or committee and its members have the information necessary to its and their tasks; (5) reporting to the main board on the committee's activities; (6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and (7) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.
COCON 3.2	<p>The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:</p> <ol style="list-style-type: none"> (1) the requirements in <i>SYSC 4.3A</i> about the nomination committee (if that part of <i>SYSC</i> applies to the <i>firm</i>); and (2) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.
COCON 3.3	<p>Paragraph 3.2 of this annex is still relevant to a <i>firm</i>:</p> <ol style="list-style-type: none"> (1) that is not required by the <i>FCA Handbook</i> to have a nomination committee; or (2) for which being the chair of such a committee is not a <i>controlled function</i>; <p>if it has such a committee.</p>
COCON 4	General approach to the role of a NED
COCON 4.1	The <i>FCA</i> recognises that NEDs individually do not manage a <i>firm's</i> business in the same way as executive <i>directors</i> . Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.
COCON 4.2	A NED is neither required nor expected to assume executive responsibilities.
COCON 4.3	Although NEDs who are subject to the senior management regime for <i>SMF managers</i> have individual duties under that regime, the <i>FCA</i> views the regime and its application as consistent with the principle of collective decision-making.
COCON 4.4	<p>The standard of care, skill and diligence that the <i>FCA</i> would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:</p> <ol style="list-style-type: none"> (1) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the <i>Handbook</i> (especially <i>COCON</i> and <i>DEPP</i>); and (2) the general knowledge, skill and experience that the NED has.