

Chapter 10A

FCA Approved Persons in Appointed Representatives



10A.6 FCA governing functions

Introduction

- 10A.6.1 **G** (1) Every *appointed representative* will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in ■ SUP 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*.
- (2) [deleted]
- (3) [deleted]

10A.6.2 **G** A *sole trader* does not fall within the description of the *governing functions*.

10A.6.2A **G** [deleted]

10A.6.3 **R** [deleted]

10A.6.4 **G** [deleted]

10A.6.5 **G** [deleted]

10A.6.6 **G** [deleted]

Director function (CF1)

10A.6.7 **R** If an *appointed representative* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *appointed representative*.

10A.6.8 **R** (1) If an *appointed representative* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:

		<p>(a) who is a <i>director</i>, partner, officer, member (if the <i>parent undertaking or holding company</i> is a <i>limited liability partnership</i>), <i>senior manager</i>, or employee of a <i>parent undertaking or holding company</i> of the <i>appointed representative</i>; and</p> <p>(b) whose decisions or actions are regularly taken into account by the <i>governing body</i> of the <i>appointed representative</i>.</p> <p>(2) (1) does not apply if that <i>parent undertaking or holding company</i> has a <i>Part 4A permission</i> or is regulated by an <i>EEA regulator</i>.</p> <p>(3) (1) does not apply to the function falling into ■ SUP 10A.6.13 R (<i>non-executive director</i> of the <i>parent undertaking or holding company</i>).</p>
10A.6.9	G	[deleted]
10A.6.10	G	A <i>director</i> can be a <i>body corporate</i> and may accordingly require approval as an <i>FCA-approved person</i> in the same way as a <i>natural person</i> may require approval.
10A.6.11	G	[deleted]
10A.6.11A	R	[deleted]
		Non-executive director function (CF2)
10A.6.12	R	If a <i>parent undertaking or holding company</i> is a <i>body corporate</i> , the <i>non-executive director function</i> is the function of acting in the capacity of a <i>non-executive director</i> of that <i>appointed representative</i> .
10A.6.13	R	<p>(1) If a <i>parent undertaking or holding company</i> is a <i>body corporate</i>, the <i>non-executive director function</i> is also the function of acting in the capacity of a <i>person</i>:</p> <p>(a) who is a <i>non-executive director</i> of a <i>parent undertaking or holding company</i>; and</p> <p>(b) whose decisions or actions are regularly taken into account by the <i>governing body</i> of the <i>appointed representative</i>.</p> <p>(2) However, (1) does not apply if that <i>parent undertaking or holding company</i> has a <i>Part 4A permission</i> or is regulated by an <i>EEA regulator</i>.</p>
10A.6.14	G	[deleted]
10A.6.15	G	[deleted]
10A.6.15A	R	[deleted]

10A.6.15B **R** [deleted]

10A.6.15C **G** [deleted]

Guidance on persons in a parent undertaking or holding company exercising significant influence

- 10A.6.16 **G**
- (1) The explanation in **■** SUP 10C.5B.2G of the basis on which the *group entity senior manager function* is included as a *controlled function* for an *SMCR firm* is also relevant to the basis on which the *director function* and the *non-executive director function* are applied to persons who have a position with the *appointed representative's parent undertaking or holding company* under **■** SUP 10A.6.8 R or **■** SUP 10A.6.13 R.
 - (2) The *guidance* in **■** SUP 10C.5B.3G to **■** SUP 10C.5B.5G about when the *group entity senior manager function* applies to an *SMCR firm* is also relevant to when those who have a position with an *appointed representative's parent undertaking or holding company* may be performing a *controlled function* under **■** SUP 10A.6.8 R or **■** SUP 10A.6.13 R.

Chief executive function (CF3)

10A.6.17 **R** The *chief executive function* is the function of acting in the capacity of a *chief executive* of an *appointed representative*.

- 10A.6.18 **G** This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*:
- (1) for the conduct of the whole of the business (or relevant activities); or
 - (2) in the case of a branch in the *United Kingdom* of a non-UK *appointed representative*, for the conduct of all of the activities subject to the *UK regulatory system*.

10A.6.19 **G** For a branch in the *United Kingdom* of a non-UK *appointed representative*, the *FCA* would not normally expect the overseas *chief executive* of the *appointed representative* as a whole to be *FCA-approved* for this function where there is a *senior manager* under them with specific responsibility for those activities of the branch which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *appointed representative* responsible for *UK operations* may, if the function is likely to enable them to exercise significant influence over the branch, also perform the *chief executive function*.

10A.6.20 **G** A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that

responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.

10A.6.21 **G** Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved to perform the *chief executive function*.

10A.6.22 **G** [deleted]

Partner function (CF4)

10A.6.23 **R**

- (1) If an *appointed representative* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *appointed representative*.
- (2) If the principal purpose of the *appointed representative* is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the *appointed representative* is other than to carry on *regulated activities*:
 - (a) a *partner* performs the *partner function* to the extent only that they have responsibility for a *regulated activity*; and
 - (b) a *partner* in an *appointed representative* will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of *partners*.

10A.6.24 **G** [deleted]

10A.6.25 **G** [deleted]

10A.6.26 **R** If an *appointed representative* is a *limited liability partnership*, the *partner function* extends to the *appointed representative* as if the *appointed representative* were a *partnership* and a member of the *appointed representative* were a *partner*.

10A.6.27 **R** If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.

10A.6.28 **G** [deleted]

Director of unincorporated association function (CF5)

10A.6.29 **R** If an *appointed representative* is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

10A.6.30 **G** [deleted]

10A.6.31 **R** [deleted]

10A.6.32 **R** [deleted]

10A.6.33 **G** [deleted]

10A.6.34 **G** [deleted]

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