

Code of Conduct (COCON)

## Chapter 1

# Application and purpose

**1.1 Application**

**1.1.1** **G** Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of certain *persons* working in *firms*.

**To whom does it apply?**

**1.1.1A** **R** COCON applies to the *persons* set out in the table in **■** COCON 1.1.2R.

**1.1.2** **R** Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
(1) An <i>SMF manager</i> .	
(2) An <i>employee</i> (“P”) of a <i>relevant authorised person</i> who: <ul style="list-style-type: none"> <li>(a) performs the function of an <i>SMF manager</i>;</li> <li>(b) is not an <i>approved person</i> to perform the function in question; and</li> <li>(c) is required to be an <i>approved person</i> at the time P performs that function.</li> </ul>	
(3) An <i>employee</i> of a <i>relevant authorised person</i> who would be an <i>SMF manager</i> but for SUP 10C.3.13R (The 12-week rule).	
(4) A <i>certification employee</i> employed by a <i>relevant authorised person</i> .	This applies even if the <i>certification employee</i> has not been notified that COCON applies to them or notified of the <i>rules</i> that apply to them.
(5) An <i>employee</i> of a <i>relevant authorised person</i> who would be a <i>certification employee</i> but for SYSC 5.2.27R(1) (Scope: emergency appointments) or SYSC 5.2.28AR (Scope: temporary UK role).	
(6) Any <i>employee</i> of a <i>relevant authorised person</i> not coming within another row of this table, except one listed in column (2).	This row does not apply to an <i>employee</i> of a <i>relevant authorised person</i> who only performs functions falling within the scope of the following roles: <ul style="list-style-type: none"> <li>(a) receptionists;</li> <li>(b) switchboard operators;</li> </ul>

Persons to whom COCON applies	Comments
	(c)post room staff; (d)reprographics/print room staff; (e)property/facilities management; (f)events management; (g)security guards; (h)invoice processing; (i)audio visual technicians; (j)vending machine staff; (k)medical staff; (l)archive records management; (m)drivers; (n)corporate social responsibility staff; (o)data controllers or processors under the <i>data protection legislation</i> ; (p)cleaners; (q)catering staff; (r)personal assistant or secretary; (s)information technology support (ie, helpdesk); and (t)human resources administrators / processors.
(7) An FCA-approved person or PRA-approved person approved to perform a <i>controlled function</i> in a <i>Solvency II firm</i> or a <i>small non-directive insurer</i> .	This row does not apply to <i>approved persons</i> approved to perform a <i>controlled function</i> in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives).
(8)A <i>standard non-executive director</i> of:	This row only applies to a <i>UK domestic firm</i> .
(a)a <i>relevant authorised person</i> ; (b)a <i>Solvency II firm</i> ; or (c)a <i>small non-directive insurer</i> .	
<b>Note:</b> In accordance with the <i>Glossary</i> , <i>Solvency II firm</i> includes a <i>large non-directive insurer</i> .	

1.1.2A **R** For *Swiss general insurers*, references in this sourcebook to parts of the *PRA Rulebook* for 'Solvency II firms' are to be read as references to the corresponding parts of the *PRA Rulebook* applying to *large non-directive insurers*.

1.1.3 **R** Rules 1 to 5 in ■ COCON 2.1 apply to all *conduct rules staff*.

1.1.4 **R** (1) Rules SC1 to SC4 in ■ COCON 2.2 apply to all *senior conduct rules staff members* (subject to (2)).

- (2) SC1 to SC3 in ■ COCON 2.2 do not apply to a *standard non-executive director* unless, as well as being a *standard non-executive director*, they also fall into one of the other categories of *senior conduct rules staff member*.
- 1.1.5 **G** (1) The *guidance* in ■ COCON 2.3 applies to *relevant authorised persons*.
- (2) [deleted]
- (3) ■ SYSC 5.2.26R provides that a function performed by a *non-executive director* of a *firm* acting as such is not an *FCA-specified significant-harm function* for that *firm*.

**To what conduct does it apply?**

- 1.1.6 **R** For a *person (P)* who is an *approved person*, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by the *firm* on whose application approval was given to P.
- [Note: sections 64A(4) and (5)(a) of the Act (Rules of conduct)]

- 1.1.7 **R** For a *person (P)* subject to COCON who is not an *approved person*, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by:
- (1) (in the case of a *board director* of a *firm*) that *firm*; or
- (2) (in any other case) P's *employer*.

[Note: sections 64A(4), (5)(ab) and (5)(b) of the Act (Rules of conduct)]

- 1.1.8 **G** (1) Both ■ COCON 1.1.6R and ■ COCON 1.1.7R may apply to the same individual performing several roles.
- (2) For example, say that an individual (A) is an *approved person* for *firm X* and is employed by *firm Y* in a role that does not involve a *controlled function*. Say that *firm X* is a *Solvency II firm* or a *small non-directive insurer* and that *firm Y* is a *relevant authorised person*.
- (3) ■ COCON 1.1.6R applies to A's role with *firm X* and ■ COCON 1.1.7R applies to A's role with *firm Y*.

**Where does it apply?**

- 1.1.9 **R** (1) COCON applies to the conduct of *conduct rules staff* set out in (2) wherever it is performed.
- (2) This *rule* applies to:
- (a) a *senior conduct rules staff member*; and

(b) a certification employee performing FCA-specified significant-harm function (7) (material risk takers) in the table in ■ SYSC 5.2.30R for a UK relevant authorised person.

1.1.10 R

- (1) This rule applies to members of a firm’s conduct rules staff apart from conduct rules staff in ■ COCON 1.1.9R.
- (2) Subject to (3), COCON only applies to the conduct of persons to whom this rule applies (as set out in (1)) if that conduct:
  - (a) is performed from an establishment maintained in the United Kingdom by:
    - (i) (for a relevant authorised person) that person’s employer; or
    - (ii) (for a Solvency II firm or a small non-directive insurer) the firm in relation to whom that person carries out controlled functions; or
  - (b) involves dealing with a client of the firm in the United Kingdom from an establishment overseas.
- (3) Paragraph (2)(b) only applies to a UK relevant authorised person.

1.1.11 G

The FCA interprets the phrase ‘dealing with’ in ■ COCON 1.1.10R as including having contact with customers and extending beyond ‘dealing’ as used in the phrase ‘dealing in investments’. ‘Dealing in’ is used in Schedule 2 to the Act to describe, in general terms, the regulated activities which are specified in Part II of the Regulated Activities Order.

1.1.11A G

- The FCA interprets the phrase ‘a client of the firm in the United Kingdom’ in ■ COCON 1.1.10R as referring to:
- (1) for a client which is a body corporate, its office or branch in the United Kingdom; or
  - (2) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.

1.1.12 R

A person will not be subject to COCON to the extent that it would be contrary to the UK’s obligations under a Single Market Directive or the auction regulation.

**Purpose**

1.1.13 G

The purpose of this chapter is to set out rules for conduct rules staff and to provide guidance about those rules to firms whose staff are subject to them.

1.1.14 G

■ COCON 1 Annex 1 has guidance on the role and responsibilities of non-executive directors to whom COCON applies.

## 1.2 Investments

- 1.2.1 **G** COCON refers in a number of places to '*investments*'. The *Glossary* meaning of *investment* is wide and is not just limited to the ordinary dictionary meaning.
- 1.2.2 **G** Therefore, for example, an *approved person* performing *controlled functions* in a *Solvency II firm* or a *small non-directive insurer* should note that that term includes rights under a contract of insurance, meaning they should also take into account those parts of COCON which provide *guidance* on individual conduct rules that refer to '*investments*'.
- 1.2.3 **G** Where *guidance* refers to risks associated with *investments*, that will include risks applicable to rights under a contract of insurance including for example the risk of inadequate cover.

## Guidance on the role and responsibilities of NEDs subject to COCON

### COCON 1 Introduction

COCON 1.1 This annex applies to *non-executive directors* (NEDs) of:

- (1) a *relevant authorised person*;
- (2) a *Solvency II firm* (including a *large non-directive insurer*); or
- (3) a *small non-directive insurer*.

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

- (1) the role of chairman of the board of *directors*;
- (2) the role of chairman of the nomination committee;
- (3) the role of chairman 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.
<b>COCON 3</b>	<b>Role of a NED as chair of the board or a committee</b>
COCON 3.1	Subject to any specific governance arrangements, <i>rules</i> or requirements applicable to the board or particular committees, a NED's responsibility as chairman of the board or a committee includes: <ol style="list-style-type: none"> <li>(1) ensuring that the board or committee meets with sufficient frequency;</li> <li>(2) fostering an open, inclusive discussion which challenges executives, where appropriate;</li> <li>(3) ensuring that the board or committee devotes sufficient time and attention to the matters within its remit;</li> <li>(4) helping to ensure that the board or committee and its members have the information necessary to its and their tasks;</li> <li>(5) reporting to the main board on the committee's activities; and</li> <li>(6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions;</li> <li>(7) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.</li> </ol>
COCON 3.2	The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with: <ol style="list-style-type: none"> <li>(1) the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC applies to the <i>firm</i>); and</li> <li>(2) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.</li> </ol>
COCON 3.3	SYSC 4.3A.8R and SYSC 4.3A.9R deal with the nomination committee for <i>relevant authorised persons</i> . There is no equivalent material for <i>Solvency II firms</i> . Although being the chair of the nomination committee is not a <i>controlled function</i> for a <i>small non-directive insurer</i> , paragraph 3.2 of this annex is still relevant to a <i>small non-directive insurer</i> if it has such a committee.
<b>COCON 4</b>	<b>General approach to the role of a NED</b>
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> or the <i>approved persons</i> regime for insurers 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	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: <ol style="list-style-type: none"> <li>(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</li> <li>(2) the general knowledge, skill and experience that the NED has.</li> </ol>