

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"> (a) performs the function of an <i>SMF manager</i>; (b) is not an <i>approved person</i> to perform the function in question; and (c) is required to be an <i>approved person</i> at the time P performs that function. 	
(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"> (a) receptionists; (b) switchboard operators;

Persons to whom COCON applies	Comments
<p>(7) An FCA-approved person or PRA-approved person approved to perform a controlled function in a Solvency II firm or a small non-directive insurer.</p> <p>(8) A standard non-executive director of:</p> <p>(a) a relevant authorised person;</p> <p>(b) a Solvency II firm; or</p> <p>(c) a small non-directive insurer.</p> <p>Note: In accordance with the Glossary, Solvency II firm includes a large non-directive insurer.</p>	<p>(c) post room staff;</p> <p>(d) reprographics/print room staff;</p> <p>(e) property/facilities management;</p> <p>(f) events management;</p> <p>(g) security guards;</p> <p>(h) invoice processing;</p> <p>(i) audio visual technicians;</p> <p>(j) vending machine staff;</p> <p>(k) medical staff;</p> <p>(l) archive records management;</p> <p>(m) drivers;</p> <p>(n) corporate social responsibility staff;</p> <p>(o) data controllers or processors under the <i>data protection legislation</i>;</p> <p>(p) cleaners;</p> <p>(q) catering staff;</p> <p>(r) personal assistant or secretary;</p> <p>(s) information technology support (ie, helpdesk); and</p> <p>(t) human resources administrators / processors.</p> <p>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).</p> <p>This row only applies to a <i>UK domestic firm</i>.</p>

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* the *auction regulation* or the *benchmarks 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.
COCON 3	Role of a NED as chair of the board or a committee
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"> (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; and (6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; (7) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.
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"> (1) the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC 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	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.
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> 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"> (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.