

## Chapter 10A

# FCA Approved Persons in Appointed Representatives

		<div>10A.1</div> <div>Application</div>
		<div>General</div>
10A.1.1	R	This chapter applies to <i>SMCR firm</i> with respect to their <i>appointed representatives</i> .
10A.1.1A	G	■ SUP 10C deals with the <i>approved persons</i> regime for <i>SMCR firms</i> themselves.
10A.1.2	G	<div>This chapter is also relevant to:</div> <div><div>(1) <i>FCA-approved person</i> of an <i>appointed representative</i> of an <i>SMCR firm</i>; and</div><div>(2) an <i>appointed representative</i> of an <i>SMCR firm</i>.</div></div>
10A.1.3	G	The <i>rules</i> in this chapter specify descriptions of <i>FCA controlled functions</i> under section 59 of the <i>Act</i> (Approval for particular arrangements).
10A.1.4	G	The directions in this chapter relate to the manner in which a <i>firm</i> must apply for the <i>FCA's</i> approval under section 59 of the <i>Act</i> and other procedures.
		<div>Overseas appointed representatives: UK services</div>
10A.1.5	R	<div>(1) This chapter does not apply in relation to an overseas <i>appointed representative</i> in relation to <i>regulated activities</i> which are carried on in the <i>United Kingdom</i> other than from an establishment maintained by it or its <i>principal</i> in the <i>United Kingdom</i>.</div> <div>(2) An overseas <i>appointed representative</i> means an <i>appointed representative</i> which has its registered office (or, if it has no registered office, its head office) outside the <i>United Kingdom</i>.</div>
		<div>Overseas appointed representatives: UK establishments</div>
10A.1.6	R	<div>(-1) Only the following <i>FCA governing functions</i> (as modified by this <i>rule</i>) apply in relation to an overseas <i>appointed representative</i> which maintains (or whose <i>principal</i> maintains) an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on:</div> <div>(a) the <i>director function</i>;</div>

- (b) the *non-executive director function*; and
  - (c) the *chief executive function*.
- (1) The *director function* only applies to the extent that the *person* performing that function:
  - (a) has responsibility for the *regulated activities* of the *UK* establishment which are likely to enable them to exercise significant influence over that establishment; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
- (2) The *non-executive director function* only applies to the extent that the *person* performing that function:
  - (a) has responsibility for the *regulated activities* of the *UK* establishment which is likely to enable them to exercise significant influence over that establishment; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) [deleted]
- (8) An overseas *appointed representative* has the same meaning as in ■ SUP 10A.1.5R.

**EEA firms**

10A.1.7	<div>R</div>	<p>This chapter does not apply in relation to the <i>appointed representative</i> of: an <i>EEA SMCR firm</i></p> <p>if and in so far as the question of whether a <i>person</i> is fit and proper to perform a particular function in relation to that <i>firm</i> is reserved to an authority in a country or territory outside the <i>United Kingdom</i> as contemplated by section 59(8) of the <i>Act</i>. This <i>rule</i> has effect to the extent that, and for as long as, section 59(8) of the <i>Act</i> remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the <i>FCA</i> under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on <i>IP completion day</i> and is titled “Main FCA Transitional Directions”.</p>
10A.1.8	<div>G</div>	[deleted]
10A.1.9	<div>G</div>	[deleted]
10A.1.10	<div>G</div>	[deleted]

**10A.1.11 R**

**Incoming EEA firms: passported activities from a branch**

Only the following *FCA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:

- (3) the *customer function* other than where this relates to the function in ■ SUP 10A.10.7R (4) and ■ (7).

**10A.1.12 R**

[deleted]

**Incoming EEA firms etc with top-up permission activities from a UK branch**

**10A.1.13 R**

In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *FCA controlled functions* apply:

- (1) the *FCA required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;
- (2) the *significant management function*, in so far as it relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and
  - (c) [deleted]
- (3) the *customer function*.

**10A.1.14 R**

[deleted]

**Appointed representatives**

**10A.1.15 R**

The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except in relation to *CBTL business* or an *introducer appointed representative*, as they apply to an *FCA-authorised person*:

- (1) the *FCA governing functions*, subject to ■ SUP 10A.1.16 R and except for a *tied agent* of an *EEA MiFID investment firm*; and
- (2) the *customer function* other than in relation to acting in the capacity of an *investment manager* (see ■ SUP 10A.10.7R (6)).

**10A.1.16 R**

- (1) This chapter is is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA governing functions*:
  - (a) *director function*; or
  - (b) *chief executive function*; or

	<p>(c) <i>partner function</i>; or</p> <p>(d) <i>director of unincorporated association function</i>;</p> <p>applies, as appropriate, to an individual within that <i>appointed representative</i> who will be required to be an <i>FCA-approved person</i>.</p> <p>(2) The conditions are that:</p> <p>(a) the scope of appointment of the <i>appointed representative</i> includes <i>insurance distribution activity</i> in relation to <i>non-investment insurance contracts</i> or <i>credit-related regulated activity</i>, but no other <i>regulated activity</i>; and</p> <p>(b) the principal purpose of the <i>appointed representative</i> is to carry on activities other than <i>regulated activities</i>.</p>
10A.1.16A R	<p>(-1) The <i>customer function</i> is the only <i>controlled function</i> in this chapter that applies to an <i>appointed representative</i> that is an <i>SMCR firm</i> and has a <i>limited permission</i> to carry on a <i>regulated activity</i> prescribed for the purposes of section 39(1E)(a) of the <i>Act</i>.</p> <p>(1) [deleted]</p> <p>(2) The <i>customer function</i> applies to the <i>appointed representative</i> in relation to the carrying on of the <i>regulated activity</i>, for which it does not have <i>permission</i>, comprised in the business for which its <i>principal</i> has accepted responsibility.</p>
10A.1.16B R	[deleted]
10A.1.16C G	Certain additional <i>controlled functions</i> apply to a <i>firm</i> in ■ SUP 10A.1.16AR under ■ SUP 10C (FCA senior managers regime for approved persons in SMCR firms).
10A.1.16D G	<p><b>Senior management functions</b>.....</p> <p>(1) Under section 59(6A) of the <i>Act</i>, if the <i>FCA</i> is satisfied that, in relation to the carrying on of a <i>regulated activity</i> by an <i>SMCR firm</i>, a <i>controlled function</i> is a <i>senior management function</i>, the <i>FCA</i> must designate the function in its <i>rules</i> as a <i>senior management function</i>.</p> <p>(2) Generally, the <i>FCA</i> does not think that a <i>person</i> performing a function in this chapter will have sufficient responsibility for managing the affairs of the <i>appointed representative's principal</i> (as opposed to managing the affairs of the <i>appointed representative</i> itself) to perform a <i>senior management function</i>.</p> <p>(3) Therefore:</p> <p>(a) the <i>FCA</i> has not designated any of the functions in this chapter as a <i>senior management function</i>; and</p> <p>(b) none of the functions in this chapter are <i>designated senior management functions</i>.</p>

		(4) ■ SUP 10C.1.8G (Appointed representatives) explains that it is unlikely that ■ SUP 10C (FCA senior managers regime for approved persons in <i>SMCR firms</i> ) will apply to <i>approved persons</i> working in <i>appointed representatives</i> of an <i>SMCR firm</i> in addition to this chapter.
10A.1.17	R	[deleted]
10A.1.18	R	[deleted]
10A.1.19	G	[deleted]
		<b>Insolvency practitioners</b> .....
10A.1.20	R	<p>This chapter does not apply to a function performed by:</p> <p>(1) a <i>person</i> acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or</p> <p>(2) a <i>person</i> acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or</p> <p>(3) a <i>person</i> acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or</p> <p>(4) a <i>person</i> acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.</p>
10A.1.21	G	[deleted]
10A.1.21A	G	[deleted]
10A.1.22	R	[deleted]
10A.1.23	G	[deleted]
10A.1.24	G	[deleted]
10A.1.25	R	[deleted]
10A.1.26	R	[deleted]
10A.1.27	G	[deleted]

10A.1.28 **R** [deleted]

10A.1.29 **R** [deleted]

10A.1.30 **R** [deleted]

10A.1.31 **G** [deleted]

10A.1.32 **G** [deleted]

**Obligations on firms**

- 10A.1.33 **G**
- (1) The requirements in this chapter about notifications and applications are addressed to *firms*. This means they are addressed to the *appointed representative's principal*.
  - (2) If an *appointed representative* has more than one *principal*, the requirements in (1) are addressed to the *authorised approved person employer* of the *approved person* in question.

**Gibraltar firms**

- 10A.1.34 **R**
- (1) A *firm* that is a Gibraltar-based firm (as defined in ■ GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA firm* for the purposes of this chapter.
  - (2) (1) is without prejudice to the generality of ■ GEN 2.3.