Chapter 10C

FCA senior managers regime for approved persons in SMCR firms
10.5 FCA governing functions: Executive

Executive director function (SMF3): General

10.5.1 R

(1) For a UK SMCR firm, the executive director function is the function of acting in the capacity of a director (other than a non-executive director) of a the firm.

(2) For an overseas SMCR firm, the executive director function is the function of acting in the capacity of a director (other than a non-executive director) in relation to its branch in the United Kingdom where the person performing that function has responsibility for managing one or more aspects of the firm’s affairs so far as relating to the activities of the branch.

(3) Paragraph (2) includes a person who is a member (other than a non-executive member) of the branch’s governing body.

(4) The executive director function does not apply to a UK SMCR firm that is:

(a) a partnership; or

(b) a limited liability partnership.

10.5.2 R [deleted] [Editor’s note: The text of this provision has been moved to SUP 10C.5A.3R]

10.5.3 G [deleted] [Editor’s note: The text of this provision has been moved to SUP 10C.5A.4G]

10.5.4 G [deleted]

10.5.5 G [deleted]

10.5.6 G [deleted] [Editor’s note: The text of this provision has been moved to SUP 10C.5A.1G]

10.5.7 G [deleted]
Executive director function: Extension of definition for Lloyd’s

10C.5.8 R

In the case of the Society, the executive director function also includes the function of acting in the capacity of an executive member of a committee to which the Council of the Society directly delegates authority to carry out the Society’s regulatory functions.

Executive director function: Adjustment of definition for non-directive friendly societies

10C.5.9 R

(1) This rule applies to a non-directive friendly society.

(2) The executive director function is the function of directing the affairs of the firm, either alone or jointly with others. Each such person is referred to in this rule as a “director”.

(3) The executive director function includes the function of being or acting in the capacity of a member of the firm’s governing body. The term director also includes each such a person.

(4) If the principal purpose of the firm is to carry on regulated activities, each director performs the FCA controlled function.

(5) If the principal purpose of the firm is other than to carry on regulated activities, a director performs the FCA controlled function only to the extent that they have responsibility for a regulated activity.

(6) Each person on the firm’s governing body will be taken to have responsibility for its regulated activities, unless the firm has apportioned this responsibility to one particular person to whom it is reasonable to give this responsibility.

(7) The “particular” person referred to in (6) need not be a member of the firm’s governing body.

(8) The executive director function does not include acting in the capacity of a non-executive director.

(9) This rule applies in place of § SUP 10C.5.1R.

10C.5.10 G

(1) Typically a non-directive friendly society will appoint a “committee of management” to direct its affairs.

(2) However, the governing arrangements may be informal and flexible. If this is the case, the FCA would expect the society to resolve to give responsibility for the carrying on of regulated activities to one individual who is appropriate in all the circumstances.

(3) The individual in (2) may, for example, have the title of chief executive or similar.

10C.5.11 G

In practice, the executive director function will often not apply (see § SUP 10C.4A.1G).
Executive director function: Addition for small non-directive insurers

10C.5.12 R

(1) This rule applies to a small non-directive insurer.

(2) The executive director function includes being a chief executive of the firm.

10C.5.13 G

SUP 10C.5.12R means:

(1) that being the chief executive of a small non-directive insurer is an FCA controlled function (subject to (4));

(2) but being chief executive is not an FCA controlled function in its own right but is rolled up into the executive director function;

(3) that being promoted from executive director to chief executive does not require a new approval from the FCA;

(4) that being the chief executive is not an FCA controlled function where SUP 10C.4A.1G applies; and

(5) SUP 10C.5.9R(4) to SUP 10C.5.9R(7) do not apply to the chief executive.

Partner function (SMF27): Partnerships and limited liability partnerships

10C.5.14 R

(1) This rule applies to a UK SMCR firm that is a partnership.

(2) The partner function is the function of being or occupying the position of a partner in that firm.

(3) The partner function also includes:

(a) the function of being or occupying the position of a partner in that firm (by whatever name called); and

(b) acting as a member of the firm’s governing body.

10C.5.15 G

(1) The purpose of SUP 10C.5.14R(3) is to make sure that every partner and everyone else performing a function in SUP 10C.5.14R(3) is potentially included in the partner function even if the Glossary definition of partner is not wide enough to cover them all.

(2) Therefore, for example, the partner function applies to every partner in a firm unless SUP 10C.5.18G applies.

(3) In practice most functions in SUP 10C.5.14R(3) will also fall within SUP 10C.5.14R(2).

10C.5.16 R

(1) This rule applies to a UK SMCR firm that is a limited liability partnership.

(2) The partner function is the function of being or acting in the capacity of:
(a) a member in that firm or a person occupying the position of a member (by whatever name called);  
(b) a person appointed to direct the firm’s affairs;  
(c) a member of the firm’s governing body; or  
(d) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the members or directors are accustomed to act.

Partner function: Limited partnerships

10C.17 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.

Partner function: Partners without influence

10C.18 (1) SUP 10C.5.14R to SUP 10C.5.17R (Partner function) are drafted to cover all partners and members.

(2) However, the partner function (as are all FCA-designated senior management functions) is subject to SUP 10C.3.10R (Definition of FCA-designated senior management function).

(3) The effect is that unless the function performed by the partner or member in question comes within the definition of a senior management function, the function does not come within the partner function. Therefore partners or members who play no part in the management of the firm are unlikely to be performing the partner function.