

## Chapter 10C

FCA senior managers regime  
for approved persons in  
SMCR firms

		<div>10C.5</div> <div>FCA governing functions: Executive</div>
		<div>Executive director function (SMF3): General</div>
10C.5.1	R	<div><div>(1) For a <i>UK SMCR firm</i>, the <i>executive director function</i> is the function of acting in the capacity of a <i>director</i> (other than a <i>non-executive director</i>) of a the <i>firm</i>.</div><div>(2) For an <i>overseas SMCR firm</i>, the <i>executive director function</i> is the function of acting in the capacity of a <i>director</i> (other than a <i>non-executive director</i>) in relation to its <i>branch</i> in the <i>United Kingdom</i> where the <i>person</i> performing that function has responsibility for managing one or more aspects of the <i>firm's</i> affairs so far as relating to the activities of the <i>branch</i>.</div><div>(3) Paragraph (2) includes a <i>person</i> who is a member (other than a non-executive member) of the <i>branch's governing body</i>.</div><div>(4) The <i>executive director function</i> does not apply to a <i>UK SMCR firm</i> that is:<div><div>(a) a <i>partnership</i>; or</div><div>(b) a <i>limited liability partnership</i>.</div></div></div></div>
10C.5.2	R	<div>[deleted] [Editor's note: The text of this provision has been moved to ■ SUP 10C.5A.3R]</div>
10C.5.3	G	<div>[deleted] [Editor's note: The text of this provision has been moved to ■ SUP 10C.5A.4G]</div>
10C.5.4	G	<div>[deleted]</div>
10C.5.5	G	<div>[deleted]</div>
10C.5.6	G	<div>[deleted] [Editor's note: The text of this provision has been moved to ■ SUP 10C.5A.1G]</div>
10C.5.7	G	<div>[deleted]</div>

**10C.5.8** **R** **Executive director function: Extension of definition for Lloyd's**  
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.

**10C.5.9** **R** **Executive director function: Adjustment of definition for non-directive friendly societies**  
(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) a member of the *firm's governing body*; or  
(b) (in the case of an *FCA-authorised firm*) the *chief executive*.  
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. The individual would (subject to ■ SUP 10C.5.11G) have to be an *FCA-approved person* under ■ SUP 10C.5.9R.

10C.5.11 **G**

- (1) In practice, the *FCA* expects that most *non-directive friendly societies* will be *PRA-authorised persons*.
- (2) Where that is the case, 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.5.17** **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.

**Partner function: Partners without influence**

- 10C.5.18** **G**
- (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*.

**Partner function: When partners and members do not require approval**

- 10C.5.19** **R**
- (1) This *rule* applies to an *SMCR firm* that is an *FCA-authorised person* to which the *partner function* applies.
  - (2) If the principal purpose of the *firm* is to carry on one or more *regulated activities*, each *person* in ■ SUP 10C.5.14R to ■ SUP 10C.5.16R (a "*partner*") performs the *partner function*.
  - (3) If the principal purpose of the *firm* 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 a *firm* will be taken to have responsibility for each *regulated activity* except where the *firm* has apportioned responsibility to another partner or group of partners.

10C.5.20 **G**

- (1) This paragraph ■ SUP 10C.5.20G describes some of the combined effects of ■ SUP 10C Annex 1 2.1R and ■ SUP 10C.5.19R.
- (2) A partner whose only *regulated activities* are incidental to their professional services, in a *firm* whose principal purpose is to carry on other than *regulated activities*, need not be an *FCA-approved person*.
- (3) What amounts to the principal purpose of the *firm* is a matter of fact in each case having regard to all the circumstances, including the activities of the *firm* as a whole.
- (4) Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.

#### Chief executive function (SMF1)

10C.5.21 **R**

- (1) The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.
- (2) This function does not apply to a *non-directive friendly society*.

10C.5.22 **G**

This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body* for the conduct of the whole of the business (or relevant activities) of the *firm*.

10C.5.23 **G**

- (1) A *person* performing the *chief executive function* may be a member of the *governing body* but need not be.
- (2) If the chairman of the *governing body* is also the *chief executive*, they will be discharging this function.
- (3) If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*.
- (4) But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.

#### Head of third country branch function (SMF 19)

10C.5.24 **R**

- (1) This *rule* applies to an *overseas SMCR firm*.
- (2) The *head of third country branch function* is the function of having responsibility alone or jointly with others, for the conduct of all activities of the *United Kingdom branch* of the *firm* which are subject to the *UK regulatory system*.