

Senior managers and certification regime: Introduction and classification

## Chapter 23

# Senior managers and certification regime: Introduction and classification



## 23.1 Purpose

### 23.1.1

**G**

The purpose of this chapter is to:

- (1) explain what the senior managers and certification regime is and where to find the main *FCA Handbook* provisions;
- (2) define which *firms* the regime applies to; and
- (3) define the different kinds of *SMCR firm*.



## 23.2 Definitions and types of firms

### 23.2.1

**R**

■ SYSC 23 Annex 1R (Definition of SMCR firm and different types of SMCR firms) defines:

- (1) what an *SMCR firm* is; and
- (2) what the different types of *SMCR firm* are.



## 23.3 Overview of the senior managers and certification regime

- 23.3.1 **G** There are three main elements to the regime:
  - (1) the senior managers regime;
  - (2) the certification regime; and
  - (3) conduct rules that apply directly to a *firm's* workforce.
- 23.3.2 **G** The table in ■ SYSC 23.3.3G gives more details about each of those three elements.
- 23.3.3 **G** Table: Summary of the senior managers and certification regime

Description of component of the regime	Handbook provisions
The senior managers regime: Parts that apply to all firms	
Pre-approval by the <i>FCA</i> of senior management (the <i>FCA Handbook</i> calls senior management subject to pre-approval <i>SMF managers</i> )	SUP 10C
<i>Firm</i> to be satisfied that a <i>person</i> is fit and proper before applying for them to be approved as an <i>SMF manager</i> by the <i>FCA</i> or <i>PRA</i>	This requirement is in section 60A of the <i>Act</i> . There is <i>guidance</i> on it in SUP 10C.10.14G (Vetting of candidates by the firm).
Annual assessment of fitness and propriety by the <i>SMF managers' firms</i>	This requirement is in section 63(2A) of the <i>Act</i> . There is <i>guidance</i> and related notification obligations in SUP 10C.14.18R to SUP 10C.14.25G (Notifications about fitness, disciplinary action and breaches of <i>COCON</i> ).
A <i>firm</i> should carry out criminal records checks before applying for someone to be approved as an <i>SMF manager</i> .	SUP 10C.10.16R (Criminal records checks and verifying fitness and propriety)
A <i>firm</i> should ask for a regulatory reference before appointing someone to be an <i>SMF manager</i> , or to certain other senior management positions, and give one if asked to by another <i>firm</i> doing so.	SYSC 22 (Regulatory references)

Description of component of the regime	Handbook provisions
<p><i>Statements of responsibilities</i></p> <p>This is a document that sets out the responsibilities that an <i>SMF manager</i> performs as part of their <i>designated senior management function</i>. It is prepared as part of the <i>firm's</i> application to the <i>FCA</i> or <i>PRA</i> for them to be approved as an <i>SMF manager</i>. It should be updated after approval when there has been any significant change in the responsibilities of the <i>SMF manager</i>.</p>	<p>SUP 10C.11 (Statements of responsibilities).</p> <p>Many of the requirements are in the Act itself but they are summarised in SUP 10C.11.</p> <p>SUP 10C.11 also adds some further requirements, particularly about there being one <i>statement of responsibilities</i> per <i>SMF manager</i> per <i>firm</i>.</p>
<p>Duty of responsibility</p> <p>This applies to <i>SMF managers</i> in all types of <i>firm</i>.</p>	<p>This is dealt with in section 66A(5) of the Act.</p> <p>There is guidance on this in DEPP 6.2.9-AG to DEPP 6.2.9-FG.</p>
<p>The senior managers regime: Parts that apply to many firms</p> <p>A <i>firm</i> should allocate certain specified management responsibilities among its <i>SMF managers</i>.</p>	<p>SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities)</p>
<p>The <i>FCA Handbook</i> calls them <i>FCA-prescribed senior management responsibilities</i>.</p> <p>A <i>firm</i> should maintain a comprehensive and up-to-date document (called the <i>management responsibilities map</i>) that describes its management and governance arrangements.</p>	<p>SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material)</p>
<p>A <i>firm</i> should ensure that, at all times, one or more of its <i>SMF managers</i> have overall responsibility for each of the activities, business areas and functions of the <i>firm</i>.</p>	<p>SYSC 26 (Senior managers and certification regime: Overall and local responsibility)</p>
<p>A <i>firm</i> should ensure that a person becoming an <i>SMF manager</i> has all the information and material that they could reasonably expect to have to perform their responsibilities.</p>	<p>SYSC 25.9 (Handover procedures and material)</p>
<p>The senior managers regime: Parts outside the Handbook</p> <p>Criminal offence relating to a decision that causes a financial institution to fail</p> <p>It applies to a <i>UK SMCR banking firm</i> but does not apply to a <i>credit union</i>.</p> <p>It does not apply to any <i>firm</i> that is not a <i>UK SMCR banking firm</i>.</p>	<p>This is contained in section 36 of the Financial Services (Banking Reform) Act 2013</p>
<p>The certification regime</p> <p>A <i>firm</i> should not permit an <i>employee</i> to carry out certain functions</p>	<p>Most of the requirements of this regime are in sections 63E (Certifica-</p>

Description of component of the regime	Handbook provisions
<p>(<i>certification functions</i>) unless it has issued them with a certificate.</p> <p>The certificate is only valid for a year. The <i>firm</i> will have to renew it if the <i>employee</i> is to carry on performing the function.</p> <p>A <i>firm</i> may not issue or renew a certificate unless it is satisfied that the person is fit and proper.</p> <p>Certification does not involve pre-approval by the <i>FCA</i> or <i>PRA</i>.</p> <p>A <i>firm</i> should ask for a regulatory reference before appointing someone to perform an <i>FCA certification function</i> (or a <i>PRA</i> equivalent) and give one if asked to by another <i>firm</i> doing so.</p> <p>Conduct rules (applies to all firms)</p> <p><i>Rules</i> of conduct that apply directly to a <i>firm's</i> workforce other than ancillary staff.</p> <p>A <i>firm</i> should report breaches of <i>COCON</i> to the <i>FCA</i>.</p> <p>A <i>firm</i> should:</p> <p>(a) ensure that all <i>persons</i> subject to <i>COCON</i> are notified of the <i>rules</i> that apply to them; and</p> <p>(b) take all reasonable steps to ensure that they understand how <i>COCON</i> applies to them</p>	<p>tion of employees by authorised persons) and 63F (Issuing of certificates) of the <i>Act</i>.</p> <p>SYSC 27 (Senior managers and certification regime: Certification regime) describes the regime and explains which <i>employees</i> are covered.</p> <p>SYSC 22 (Regulatory references)</p> <p><i>COCON</i></p> <p>Section 64C of the <i>Act</i> (Requirement for authorised persons to notify regulator of disciplinary action) and SUP 15.11 (Notification of <i>COCON</i> breaches and disciplinary action)</p> <p>These obligations are in section 64B of the <i>Act</i> (Rules of conduct: responsibilities of authorised persons).</p> <p>There is guidance in <i>COCON</i> 2.3 (Firms: Training and breaches).</p>

23.3.4



The *PRA* has requirements corresponding to the senior managers and certification regime that apply to *PRA-authorised persons*. The *FCA* and *PRAs'* regimes are designed to work together and complement each other. A *PRA-authorised person* will therefore need to consider the *PRA's* requirements to get a complete picture of the requirements that apply to it (and its workforce) in the area covered by the senior managers and certification regime and the requirements in the *Act* on which it is based.

## Definition of SMCR firm and different types of SMCR firms

### Part One: Flow diagram and other basic provisions

- 1.1 R The flow diagram in SYSC 23 Annex 1 1.2R defines:
- (1) an *SMCR firm*; and
  - (2) the different categories of *SMCR firm*.
- 1.2 R Flow diagram: Types of SMCR firm

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### Note to the decision tree

The categorisation in this decision tree is subject to ■ SYSC 23 Annex 1 2.1R.

### Part Two: Changing category

- 2.1 R If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *FCA Handbook* applicable to one of the categories of *SMCR firm* set out in this Annex, it is to be treated as falling into that category of *SMCR firm* for all purposes.

### Part Three: Definition of exempt firm

- 3.1 R This part defines an exempt firm for the purposes of the flow diagram in Part One of this Annex.
- 3.2 R An *overseas firm* is an exempt *firm* if it:
- (1) does not have; and (2) does not have an appointed representative that has;
  - (2) does not have an *appointed representative* that has; an establishment in the *United Kingdom*.
- 3.3 R An *incoming EEA firm* that is an *EEA pure reinsurer* is an exempt firm.

### Part Four: Definition of banking sector

- 4.1 R A *firm* is in the banking sector for the purposes of the flow diagram in Part One of this Annex if the *firm* meets the conditions in SYSC 23 Annex 1 4.2R, SYSC 23 Annex 1 4.4R or SYSC 23 Annex 1 4.6R.
- 4.2 R A *firm* is in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an institution that meets the following conditions:
- (1) it is incorporated in, or formed under the law of any part of, the *United Kingdom*;
  - (2) it is not an institution authorised under the *Act* to carry on the *regulated activity* of *effecting contracts of insurance* or *carrying out contracts of insurance*; and

		(3) it meets one of the following conditions:
		(a) its <i>Part 4A permission</i> includes <i>accepting deposits</i> ; or :
		(b) it meets all the following conditions:
		(i) the institution is an <i>investment firm</i> ;
		(ii) its <i>Part 4A permission</i> covers <i>dealing in investments as principal</i> ; and
		(iii) when carried on by it, that activity is a <i>PRA-regulated activity</i> .
4.3	R	An <i>SMCR banking firm</i> in SYSC 23 Annex 1 4.2R is a <i>UK SMCR banking firm</i> .
4.4	R	A <i>firm</i> is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than an <i>incoming firm</i> that meets the following conditions:
		(1) it has a <i>branch</i> in the <i>United Kingdom</i> ;
		(2) it is not an institution authorised under the <i>Act</i> to carry on the <i>regulated activity</i> of <i>effecting contracts of insurance</i> or <i>carrying out contracts of insurance</i> ; and
		(3) it meets one of the following conditions:
		(a) it is a <i>credit institution</i> which has a <i>Part 4A permission</i> that includes <i>accepting deposits</i> ; or
		(b) it meets all the following conditions:
		(i) the institution is an <i>investment firm</i> ;
		(ii) its <i>Part 4A permission</i> covers <i>dealing in investments as principal</i> ; and
		(iii) when carried on by it, that activity is a <i>PRA-regulated activity</i> .
4.5	R	An <i>SMCR banking firm</i> in SYSC 23 Annex 1 4.4R is a <i>third-country SMCR banking firm</i> .
4.6	R	A <i>firm</i> is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> that meets the following conditions:
		(1) it has a <i>branch</i> in the <i>United Kingdom</i> ;
		(2) it is not an institution authorised under the <i>Act</i> to carry on the <i>regulated activity</i> of <i>effecting contracts of insurance</i> or <i>carrying out contracts of insurance</i> ; and
		(3) it meets one of the following conditions:
		(a) it is a <i>credit institution</i> which has a <i>permission</i> under Part 4A, Schedule 3 or Schedule 4 of the <i>Act</i> that includes <i>accepting deposits</i> ; or
		(b) it meets all the following conditions:
		(i) the institution is an <i>investment firm</i> ;
		(ii) it has a <i>permission</i> under Part 4A, Schedule 3 or Schedule 4 of the <i>Act</i> that covers <i>dealing in investments as principal</i> ; and
		(iii) when carried on by it, that activity is a <i>PRA-regulated activity</i> .
4.7	R	An <i>SMCR banking firm</i> in SYSC 23 Annex 1 4.6R is an <i>EEA SMCR banking firm</i> .
Part Five: Definition of insurance sector		
5.1	R	A <i>firm</i> is in the insurance sector for the purposes of the flow diagram in Part One of this Annex if the <i>firm</i> is:
		(1) a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i> ); or
		(2) a <i>small non-directive insurer</i> .
5.2	R	(1) A <i>firm</i> from which the Solvency II rules (as defined by the part of the <i>PRA Rulebook</i> described in this paragraph (1)) are disapplied by chapter 2 of the Solvency II Firms: Transitional Measures part of the <i>PRA Rulebook</i> is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.



- (2) A *firm* defined as a small run-off firm in the Glossary part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.

