

Senior managers and certification regime: Overall and local responsibility

Chapter 26

Senior managers and
certification regime: Overall
and local responsibility



26.1 Application

Main application rules

26.1.1 **R** This chapter applies to:

- (1) an *SMCR banking firm*; and
- (2) an *SMCR insurance firm* that is a *Solvency II firm* (including a *large non-directive insurer*) but excluding:
 - (a) an *insurance special purpose vehicle*; and
 - (b) a *firm* in ■ SYSC 23 Annex 1 5.2R (*firms in run-off*);
 except to the extent that this chapter applies a narrower scope to a particular provision.

26.1.2 **R** This chapter is not limited to *regulated activities* or other specific types of activities.

Exclusions

26.1.3 **R** This chapter does not apply to an *EEA SMCR firm*.

Territorial scope

26.1.4 **R** There is no territorial limitation on the application of this chapter, save as set out in ■ SYSC 26.1.5R.

26.1.5 **R** When this chapter applies to an *overseas SMCR firm*, it applies in relation to the *firm's branch* in the *United Kingdom*.

26.1.6 **R** Unless the context requires otherwise, the terms in the first column of the table in ■ SYSC 26.1.7R are modified as described in the second column of that table in relation to an *overseas SMCR firm*.

26.1.7 **R** Table: Application of this chapter to a third-country SMCR firm

Reference in this chapter	Modification
<i>firm</i>	treated as a reference to the <i>branch</i>

Reference in this chapter	Modification
<i>governing body</i>	(a) treated as a reference to the <i>branch's governing body</i> ; (b) the <i>Glossary</i> definition of this term is adjusted so as to refer to the <i>branch</i> rather than the <i>firm</i> as a whole
<i>group</i>	treated as including the rest of the <i>firm</i>
chief executive	<i>branch manager</i> or the <i>person performing the PRA's Head of Overseas Branch designated senior management function</i>



26.2 Purpose

- 26.2.1** **G** The purpose of this chapter is to ensure, together with the equivalent *PRA* requirements and the requirements about *FCA-prescribed senior management responsibilities* in ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities), that:
- (1) an *SMF manager* is responsible and accountable for every area of a *firm's* activities;
 - (2) the allocation of responsibilities is done systematically and explicitly; and
 - (3) the process of allocation of responsibilities under this chapter covers every part of a *firm's* activities, business areas and management functions (subject to the exclusions in ■ SYSC 26.4 (Exclusions) without any gaps in what is allocated in this process.
- 26.2.2** **G** The purpose of this chapter is not primarily to ensure that formal responsibility for everything a *firm* does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the *chief executive* by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default.
- 26.2.3** **G**
- (1) The allocation of responsibilities under this chapter does not replace the responsibilities of the *chief executive*.
 - (2) If a *firm* allocates responsibilities under this chapter to an *SMF manager* other than the *chief executive*, the *chief executive* will be responsible for managing that *person's* performance of those responsibilities in the same way that the *chief executive* manages that *person's* other responsibilities.
 - (3) A *firm* may allocate responsibilities under this chapter to the *chief executive*.

26.3 Main rules

- 26.3.1** **R** A UK SMCR firm must ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and management functions of the firm.
- 26.3.2** **R**
- (1) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has overall responsibility (subject to the branch's governing body) for each of the activities, business areas and management functions of the branch that are under the management of the branch's governing body.
 - (2) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has responsibility for each of the activities, business areas and management functions of the branch not covered by (1).
 - (3) An SMF manager in (2) must be directly involved in the management of the activity, business area or management function for which they have responsibility under (2).
- 26.3.3** **R** An SMF manager who has responsibility for an activity, business area or management function under this section:
- (1) (in the case of a UK SMCR firm) has "overall responsibility";
 - (2) (in the case of an overseas SMCR firm) has "local responsibility";
- for that activity, business area or management function.
- 26.3.4** **R** A firm must make the allocations of responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.



26.4 Exclusions

Exclusions where other requirements apply

26.4.1 **R** ■ SYSC 26.3 (Main rules) does not require a *firm* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is included in an *FCA-prescribed senior management responsibility* that applies to the *firm*.

26.4.2 **R** ■ SYSC 26.3 (Main rules) does not require a *firm* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is:

- (1) included in a *PRA-prescribed senior management responsibility* that applies to the *firm*; or
- (2) managed (as part of the *PRA-designated senior management function* concerned) by any of the *firm's SMF managers* approved to perform any of the following *PRA-designated senior management functions* for the *firm*:
 - (a) the Chief Finance function;
 - (b) the Chief Risk function;
 - (c) the Head of Internal Audit function;
 - (d) the Head of Key Business Area function;
 - (e) the Chief Operations function; or
 - (f) the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.

Exclusion of the governing body and non-executive directors

26.4.3 **R** ■ SYSC 26.3 (Main rules) does not require a *firm* to allocate overall or local responsibility for the running of the *firm's governing body*.

26.4.4 **G** ■ SYSC 26.4.3R means that a *person* does not have overall or local responsibility for a function under this chapter just by being a member of a *firm's governing body* or equivalent.

26.4.5 **G** (1) A *person* who just provides oversight of a function does not have overall or local responsibility for that function under this chapter.

- (2) Paragraph (1) and ■ SYSC 26.4.4G mean that a *non-executive director* acting as such does not have overall or local responsibility for a function under ■ SYSC 26.3 or perform the *other overall responsibility function* or the *other local responsibility function*.
- (3) Paragraph (1) and ■ SYSC 26.4.4G mean that a *non-executive director*:
 - (a) providing oversight of a function; or
 - (b) being responsible for the independence of a function;
 does not have overall or local responsibility for that function under this chapter or perform the *other overall responsibility function* or the *other local responsibility function*.

Exclusion where the 12-week rule applies

26.4.6

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- (1) This *rule* applies where:
 - (a) a *firm* appoints someone to perform a function in order to provide cover as described in ■ SUP 10C.3.13R(1) (The 12-week rule) or the *PRA* equivalent; and
 - (b) the *firm* has allocated any responsibilities (the “Responsibilities”) under ■ SYSC 26.3 (Main rules) to the *SMF manager* (the absent manager) who is absent as described in ■ SUP 10C.3.13R(2) or the *PRA* equivalent.
- (2) While the disapplication of the *designated senior management function* provided for in ■ SUP 10C.3.13R or the *PRA* equivalent is still in force the *firm* may allocate the Responsibilities to an *employee* who is not an *SMF manager*.
- (3) For the purposes of this *rule*, the *PRA* equivalent of:
 - (a) ■ SUP 10C.3.13R is the following parts of the *PRA Rulebook*:
 - (i) rule 2.3 in “Senior Management Functions”;
 - (ii) rule 2.4 in “Insurance - Senior Management Functions”; and
 - (iii) rule 2.4 in “Large Non-Solvency II Firms – Senior Management Functions”.
 - (b) ■ SUP 10C.3.13R(1) and (2) is the following parts of the *PRA Rulebook*:
 - (i) rules 2.3(1) and (2) in “Senior Management Functions”;
 - (ii) rules 2.4(1) and (2) in “Insurance - Senior Management Functions”; and
 - (iii) rules 2.4(1) and (2) in “Large Non-Solvency II Firms – Senior Management Functions”.

26.4.7

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A *firm* need not allocate the Responsibilities referred to in ■ SYSC 26.4.6R(1)(b) to the person who is providing cover for the absent *SMF manager*.

26.4.8

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■ SYSC 26.4.6R and ■ SUP 10C.3.13R apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as well as to a person performing one of the other *designated senior management functions*.



26.5 Guidance on territorial scope

Allocation of responsibilities and territorial scope

26.5.1 **G** ■ SYSC 26.1.4R (territorial scope) means that a *firm* should allocate overall responsibilities under this chapter so that they cover activities, transactions, business areas and functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

Allocation of responsibility for transactions in branches

26.5.2 **G** There is an exception to ■ SYSC 26.5.1G for an *overseas SMCR firm*. This is that ■ SYSC 26.1.5R limits this chapter to the activities of its *UK branch*.

- 26.5.3** **G**
- (1) It is common for a *branch* to carry out only part of a transaction. For instance, a transaction may be booked in a *branch* but negotiated and arranged elsewhere or vice versa.
 - (2) When allocating responsibility to an *SMF manager* for activities in relation to transactions under ■ SYSC 26.3 (Main rules), a *firm* should not exclude a transaction which is arranged, booked or negotiated in the *branch* merely because other elements of the transaction occur outside the *United Kingdom*.



26.6 Meaning of local and overall responsibility: General

UK firms

26.6.1 **G** The meaning in practice of overall responsibility for a function of a *UK SMCR firm* depends on whether that function is under the management of the *firm's governing body* or not.

26.6.2 **G**

- (1) Certain *EU* legislation requires the *governing body* of a *firm* to have ultimate responsibility for, and the prime and leading role in, managing the *firm*.
- (2) In particular this is the case under:
 - (a) article 88 of the *CRD* (Governance arrangements);
 - (b) article 9 of *MiFID* (management body); and
 - (c) article 40 of the *Solvency II Directive* (Responsibility of the administrative, management or supervisory body).
- (3) This means that the *governing body* of a *UK SMCR firm* subject to these requirements will manage the conduct of the whole of the business of the *firm*. In turn that means that the parts of this chapter dealing with a function that is not managed by the *firm's governing body* will not be relevant to it.

26.6.3 **G** The *FCA* recognises that for some *UK SMCR firms* not subject to the requirements in **SYSC 26.6.2G**, some activities, business areas and functions of a *firm* may not be under the management of its *governing body*. This may be the case where, for example:

- (1) the *firm* does not have a *governing body*; or
- (2) the *firm's* shareholders play a key role in managing it through, for example, a *group* management committee.

Branches of overseas firms

26.6.4 **G** (1) **SYSC 26.3.2R(1)** refers to the activities, business areas and management functions of the *branch* that are under the management of the *branch's governing body*. However, the *FCA* recognises that for some *branches*, some activities, business areas and functions of the *branches* may not be under the management of the *branch's governing body*. This may be the case where the *branch* does

not have its own *governing body* or where it is organised in such a way that certain functions are under the management of a *person* or *body* outside the *branch's* management structure. In those circumstances, it would not be appropriate to require the *firm* to allocate overall responsibility for that matter to a *person* who is part of the management structure of the *branch*.

- (2) The requirements to allocate responsibility for activities, business areas and functions of a *branch* under ■ SYSC 26.3.2R(1) and (2) respectively are intended to allow for the difference described in (1). In particular:
 - (a) ■ SYSC 26.3.2R(1) is intended to cater for the situation where a particular activity, business area or function of the *branch* is under the management of the *branch's governing body*. In that situation, the *firm* should allocate responsibility for that matter under ■ SYSC 26.3.2R(1); and
 - (b) ■ SYSC 26.3.2R(2) is intended to cater for the situation where a particular activity, business area or function of the *branch* is not under the management of *branch's governing body*. In that situation, the *firm* should allocate responsibility for that matter under ■ SYSC 26.3.2R(2).

Further guidance

26.6.5 **G** ■ SYSC 26.7 gives *guidance* on the effect of ■ SYSC 26.3 (Main rules) when a function is under the *governing body's* management. ■ SYSC 26.8 gives *guidance* on the effect of ■ SYSC 26.3 when the function is not.

Day-to-day or ultimate control

26.6.6 **G** Having overall or local responsibility under this chapter for a matter does not necessarily mean:

- (1) having ultimate authority over it; or
- (2) having day-to-day management control of that function.

26.6.7 **G** In particular, the ultimate decision-making body of many *UK SMCR firms* is their *governing body*, acting collectively.



26.7 Meaning of local and overall responsibility: Reporting to the governing body

- 26.7.1** **G** This section gives *guidance* on what overall and local responsibility for a function means when the *governing body* manages the function in question under ■ SYSC 26.3 (Main rules).
- 26.7.2** **G** When this chapter refers to a *person* having overall or local responsibility for a function as described in ■ SYSC 26.7.1G, it means a *person* who has:
- (1) ultimate responsibility (under the *governing body* and the *chief executive*) for managing or supervising that function; and
 - (2) primary and direct responsibility for:
 - (a) briefing and reporting to the *governing body* about that function; and
 - (b) putting matters for decision about that function to the *governing body*.
- 26.7.3** **G** In general, the *FCA* expects that a person to whom overall responsibility for a function is allocated as described in ■ SYSC 26.7.1G will be the most senior employee or officer responsible for managing or supervising that function under the management of the *governing body*.
- 26.7.4** **G**
- (1) A *person* with overall or local responsibility for a matter will either be a member of the *governing body* or will report directly to the *governing body* for that matter.
 - (2) For example, a *firm* appoints A to be head of sales. A is not on the *governing body*. A reports to an executive director (B) and B reports to the *governing body* about the sales function. In this example B, rather than A, has overall responsibility for sales.
- 26.7.5** **G**
- (1) A *person* who reports to another, or is subject to oversight by another, may still have overall or local responsibility for a function.
 - (2) For example, a head of compliance may report direct to the *governing body* but be subject to performance appraisal by the *chief executive*. In this example, the head of compliance will still have overall responsibility for compliance.

- (3) If a *person* (A):
 - (a) reports directly to the *firm's governing body* about a particular matter; but
 - (b) is not a member of the *governing body*; and
 - (c) reports to a member of the *governing body* (B) about that matter, who also reports to the *governing body* about that matter;B has overall or local responsibility for that matter.
- (4) If:
 - (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter;
 - (b) A also reports to another *person* (B) about that matter;
 - (c) neither A nor B is a member of the *governing body*; and
 - (d) B also reports directly to the *firm's governing body* about that matter;B has overall responsibility for that matter.
- (5) A member of the *governing body* who reports to the *chief executive* may still have overall or local responsibility for a function.
- (6) If:
 - (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter; and
 - (b) A's function is subject to oversight by a *non-executive director* (B) or by a committee of the *firm's governing body* chaired by B;A (not B) has overall or local responsibility for that matter.

26.7.6

G A *person* may have local responsibility for a function for a *branch* of an *overseas SMCR firm* even though that *person* also reports to a *person* outside the *branch*.



26.8 Meaning of local and overall responsibility: Not reporting to the governing body

Scope of this section

26.8.1 **G** This section relates to the allocation of overall or local responsibility for any activities, business areas and functions of the *firm* which are not under the management of its *governing body* (see ■ SYSC 26.3 (Main rules)).

Branches: Responsibility held outside the management structure of branch

26.8.2 **G** A *person* having local responsibility for a function for a *branch* does not need to be part of the management structure of the *branch* in order to have local responsibility for the function.

Branches: Setting overall strategy for a branch

26.8.3 **G**

- (1) Generally, where a an *overseas SMCR firm* allocates responsibility as described in ■ SYSC 26.8.1G to one of the *firm's SMF managers* who is not based in the *branch* the *FCA* would expect:
 - (a) that the responsibility would not be allocated to a manager whose responsibilities for the *branch* are limited to setting overall strategy for the *branch*; and
 - (b) that, instead, the *firm* would allocate it to a manager who is the most senior *person* responsible for implementing the strategy for the *branch*.
- (2) See ■ SUP 10C.1.5AG for more about how the difference between strategic and implementing responsibilities affects the *FCA* senior managers regime for *approved persons* in *overseas SMCR firms*.

Branches: Seniority

26.8.4 **G**

- (1) In some cases, a *person* who has local responsibility for a particular function may be very senior within the *firm* as a whole.
- (2) For instance, in some *branches*, an individual with local responsibility for a function may also be the head of the *firm's* Europe and Middle East division for a business line and may be more senior within the *firm* as a whole than the *person* performing the *PRA's* Head of Overseas Branch *designated senior management function*.

UK firms

26.8.5

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Having overall responsibility for a function as described in ■ SYSC 26.8.1G for a *UK SMCR firm* means being the most senior employee or officer (under the *chief executive* if there is one) responsible for managing or supervising that function.



26.9 Who functions should be allocated to

Seniority

26.9.1 **G** The *FCA* expects that anyone who has overall or local responsibility for a matter:

- (1) will be sufficiently senior and credible; and
- (2) will have sufficient resources and authority;

to be able to exercise their management and oversight responsibilities effectively.

26.9.2 **G** (1) The *FCA* would not consider it unusual if a *person* who has overall or local responsibility for a particular function was not a member of the *firm's governing body* or equivalent.

- (2) For example, in some *firms*, the head of compliance may report directly to the *firm's governing body* even though the head of compliance is not a member of the *governing body*.

26.9.3 **G** Other parts of this chapter dealing with seniority are:

- (1) ■ SYSC 26.7.3G (seniority of someone with overall responsibility for a function under the management of a *firm's governing body*);
- (2) ■ SYSC 26.8.3G and ■ SYSC 26.8.4G (seniority of someone from elsewhere in the *firm* having local responsibility in a *branch*); and
- (3) ■ SYSC 26.8.5G (seniority of someone within a *UK SMCR firm* with overall responsibility for a function not under the management of a *firm's governing body*).

Not giving too much responsibility to one individual

26.9.4 **G** (1) It will be common for a small non-complex *firm* to divide overall or local responsibility for its activities under the management of its *governing body* between members of its *governing body* and not to assign overall or local responsibility for any activity to someone who is not a member.

- (2) However, when deciding how to divide up overall or local responsibility for its activities, a *firm* should avoid assigning such a

wide range of responsibilities to a particular *person* that the *person* is not able to carry out those responsibilities effectively.

- (3) Therefore, in a large or complex *firm*, the *FCA* expects overall or local responsibility for some functions to be assigned to *persons* in the layer of management below the *governing body*. Anyone in that layer having overall or local responsibility for an activity will be performing a *designated senior management function*.

26.9.5 G ■ SYSC 26.9.4G(2) also applies to allocating responsibility for functions that are not under the management of the *firm's* or *branch's governing body*.

Dividing and sharing management functions between different people

26.9.6 G The following provisions of ■ SYSC 24.3 (Who prescribed responsibilities should be allocated to) also apply to allocations under this chapter so far as those provisions deal with sharing responsibilities:

- (1) ■ SYSC 24.3.8G (responsibilities should generally not be shared);
- (2) ■ SYSC 24.3.9G (when responsibilities may be shared); and
- (3) ■ SYSC 24.3.11G (*statements of responsibilities*);

26.9.7 G

- (1) The material in ■ SYSC 24.3 (Who prescribed responsibilities should be allocated to) about splitting of responsibilities is not directly relevant to this chapter. This is because ■ SYSC 24 deals with functions that have been defined in the *FCA Handbook* whereas this chapter does not define the areas into which a *firm's* activities should be divided when allocating responsibilities to its *SMF managers*.
- (2) However ■ SYSC 24.3.10G (responsibilities should be grouped together appropriately) is also relevant for deciding whether responsibility for a particular set of matters should be allocated to one *SMF manager* or allocated between several.



26.10 Group management arrangements and outsourcing

- 26.10.1** **G** (1) This chapter requires overall or local responsibility for various aspects of a *firm's* affairs to be allocated to an *SMF manager*.
- (2) This requirement does not prevent a *firm* from relying on an employee of a company in the same group to perform the function.
- (3) A *firm* has two main choices about how to fit such arrangements into the senior managers regime for *SMCR firms*.
- (a) The group employee is appointed by the *firm* (usually by its *governing body* if it has one) to perform the function. This means that the *firm* will have entered into an arrangement with that *person*. As explained in ■ SUP 10C.3.9G, an arrangement with the *firm* is one of the factors that makes the senior managers regime for *SMCR firms* apply. The result is that the group official will be performing a *controlled function* and will need to be approved as an *SMF manager*.
- (b) The *firm* appoints someone (A) to supervise what the group employee does (so far as it concerns the *firm*) and allocates responsibility for the function to A, leaving day-to-day activities to the group employee. A will need to be approved as an *SMF manager*.
- 26.10.2** **G** ■ SYSC 26.10.1G also applies to a *firm* that outsources functions to a third party and is relying on an individual from the outsourced services provider to carry out the functions in those paragraphs.
- 26.10.3** **G** (1) This chapter does not cover responsibility for an aspect of a *firm's* affairs managed by an individual approved to perform the Group Entity Senior Manager or the Group Entity Senior Insurance Manager *PRA-designated senior management function* (see ■ SYSC 26.4.2R (Exclusions where other requirements apply)).
- (2) Where a responsibility is held by someone approved to perform one of those *PRA-designated senior management functions* for the *firm*, there is no need to appoint that person under this chapter and apply the arrangements in ■ SYSC 26.10.1G.
- (3) (a) The *statement of responsibilities* for the individual performing the *PRA-designated senior management function*; and
- (b) the *firm's management responsibilities map*;

should clearly show what responsibilities are held by that individual.



26.11 Link between this chapter and other parts of the senior managers regime

Link between designated senior management functions and this chapter

26.11.1

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- (1) Having overall or local responsibility for an activity under this chapter requires approval as an *SMF manager*. This is because a *person* who has overall or local responsibility for an activity will be:
 - (a) performing the *other overall responsibility function* or the *other local responsibility function*; or
 - (b) approved to perform another *designated senior management function*.
- (2) The *other overall responsibility function* applies because this is the effect of ■ SUP 10C.7.1R (definition of *other overall responsibility function*).
- (3) ■ SUP 10C.7.1R(2) says that the *other overall responsibility function* does not apply to a *person* who is approved to perform another *designated senior management function*.
- (4) The *other local responsibility function* applies because this is the effect of ■ SUP 10C.8.1R (Definition of the *other local responsibility function* (SMF22)).
- (5) ■ SUP 10C.8.1R(2) says that the *other local responsibility function* does not apply to a *person* who is approved to perform another *designated senior management function* in relation to the *branch*.

Link between SYSC 25 Annex 1G and this chapter

26.11.2

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- (1) The purpose of ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm) is to help a *firm* to prepare its *management responsibilities map* (see ■ SYSC 25.7.2G).
- (2) There is no direct link between ■ SYSC 25 Annex 1G and this chapter.
- (3) However, a *firm* may find ■ SYSC 25 Annex 1G useful as a prompt to help it make sure that it has not failed to allocate overall or local responsibility under this chapter for a particular activity of the *firm*.

- (4) If a *firm* uses ■ SYSC 25 Annex 1G as a prompt when it allocates overall or local responsibility as described in (3), it should bear in mind that it is not comprehensive (see ■ SYSC 25.7.8G).

26.11.3 **G** The *FCA* does not require:

- (1) there to be a separate *person* with overall responsibility for each individual business area in ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm); or

a *firm* to allocate functions under this chapter using the same split of business areas as in ■ SYSC 25 Annex 1G.