

Chapter 26

Senior managers and certification regime: Overall and local responsibility

		<div>26.4 Exclusions</div>
		<div>Exclusions where other requirements apply</div>
26.4.1	R	<div>■ SYSC 26.3 (Main rules) does not require a <i>PRA-authorised person</i> to ensure that <i>SMF managers</i> have local or overall responsibility for any activity, business area or management function that is included in an <i>FCA-prescribed senior management responsibility</i> that applies to the <i>firm</i>.</div>
26.4.2	R	<div><div>■ SYSC 26.3 (Main rules) does not require a <i>firm</i> to ensure that <i>SMF managers</i> have local or overall responsibility for any activity, business area or management function that is:</div><div><div>(1) included in a <i>PRA-prescribed senior management responsibility</i> that applies to the <i>firm</i>; or</div><div>(2) managed (as part of the <i>PRA-designated senior management function</i> concerned) by any of the <i>firm's SMF managers</i> approved to perform any of the following <i>PRA-designated senior management functions</i> for the <i>firm</i>:<div><div>(a) the Chief Finance function;</div><div>(b) the Chief Risk function;</div><div>(c) the Head of Internal Audit function;</div><div>(d) the Head of Key Business Area function;</div><div>(e) the Chief Operations function; or</div><div>(f) the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.</div></div></div></div></div>
		<div>Exclusion of the governing body and non-executive directors</div>
26.4.3	R	<div>■ SYSC 26.3 (Main rules) does not require a <i>firm</i> to allocate overall or local responsibility for the running of the <i>firm's governing body</i>.</div>
26.4.4	G	<div>■ SYSC 26.4.3R means that a <i>person</i> does not have overall or local responsibility for a function under this chapter just by being a member of a <i>firm's governing body</i> or equivalent.</div>
26.4.5	G	<div><div>(1) A <i>person</i> who just provides oversight of a function does not have overall or local responsibility for that function under this chapter.</div></div>

- (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 (in the case of a *PRA-authorised person*) 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 (in the case of a *PRA-authorised person*) the *PRA* equivalent.
- (2) While the disapplication of the *designated senior management function* provided for in ■ SUP 10C.3.13R or (in the case of a *PRA-authorised person*) 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*.

Exclusion of the legal function

- 26.4.9

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(1) ■ SYSC 26.3 (Main rules) applies to the *SMCR legal function* as modified by (2).

(2) A *firm* may allocate local or overall responsibility for the *SMCR legal function* to someone who is not an *SMF manager*.
- 26.4.10

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(1) The *SMCR legal function* of a *firm* means an activity of the *firm* that consists of one or more of the following:

(a) the provision of legal advice or assistance to the *firm* or any member of its *group* in connection with the application of the law or with any form of resolution of legal disputes;

(b) the provision of representation for the *firm* or any member of its *group* in connection with any matter concerning the application of the law or any form of resolution of legal disputes;

(c) a reserved legal activity as defined in section 12 of the Legal Services Act 2007 (Meaning of “reserved legal activity” and “legal activity”) when carried out for the *firm* or any member of its *group*; or

(d) any of the activities set out in section 32(1) of the Solicitors (Scotland) Act 1980 (Offence for unqualified persons to prepare certain documents) when carried out for the *firm* or any member of its *group*.

(2) For the purposes of the definition of the *SMCR legal function*, legal dispute includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any *person's* legal rights or liabilities.
- 26.4.11

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(1) If a *firm* allocates the functions in (2) to the same *person* as the one to whom it allocates responsibility for activities in ■ SYSC 26.4.10R, the functions in (2) also form part of the *SMCR legal function*. As a result the exclusion in ■ SYSC 26.4.9R(2) also applies.

(2) A function is covered by this *rule* to the extent that it directly supports the activities in ■ SYSC 26.4.10R.
- 26.4.12

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(1) The purpose of ■ SYSC 26.4.11R is to treat support services for the legal function as part of the legal function where responsibility for the support services is allocated to the person with overall responsibility for the legal function.

(2) A support service is one that is directly related, but subordinate, to the legal services described in ■ SYSC 26.4.10R. It should be necessary for the successful or better functioning of the main legal services and be an integral part of them.

- (3) One example of a support service is human resources services for the legal staff. This includes recruitment, training, continuing professional development, appraisal and discipline.
- (4) The effect of ■ SYSC 26.4.11R is that if the person with overall responsibility for the legal function also has overall responsibility for human resources services for the staff of the legal function, those services are covered by the exclusion in ■ SYSC 26.4.9R(2). However, they are not excluded if those services are provided by a separate human resources department.
- 26.4.13** G (1) A *firm* may divide its legal function into different parts and appoint a different person to have overall responsibility for each.
- (2) If it does, ■ SYSC 26.4.9R and ■ SYSC 26.4.11R still apply.
- (3) So for example, if the *firm* has two legal departments, one headed by A (for which A has overall responsibility) and one headed by B (for which B has overall responsibility):
- (a) neither A nor B need be an *SMF manager*; and
 - (b) the *firm* may allocate overall responsibility for the human resources function for A's department to A and overall responsibility for the human resources function for B's department to B even though neither A nor B is an *SMF manager*.
- 26.4.14** G ■ SUP 10C.7.1R and ■ SUP 10C.8.1R exclude the person with overall responsibility for the legal function from the *other overall responsibility function* (SMF18) and the *other local responsibility function* (SMF22).
- 26.4.15** G The exclusions in ■ SYSC 26.4.9R(2), ■ SYSC 26.4.11R and ■ SYSC 26.4.14G do not affect the scope of the following or the obligation to appoint an *SMF manager* to carry them out:
- (1) any *FCA-designated senior management function* other than the ones in ■ SYSC 26.4.14G; or
 - (2) any of the *FCA-prescribed responsibilities*.
- 26.4.16** R **Exclusion of non-financial services activities**

 ■ SYSC 26.3 (Main rules) only requires an *enhanced scope SMCR firm* to allocate responsibility for activities, business areas and management functions to the extent that they support, form part of or otherwise relate to its *SMCR financial activities*.
- 26.4.17** G ■ SYSC 25.3.3G and ■ SYSC 25.3.4G (Management responsibilities maps: Exclusion of non-financial services activities for some firms) are relevant to

when an *enhanced scope SMCR firm* may exclude support services from the allocation of responsibilities under this chapter.

Exclusion for AIFMD

26.4.18 **R** A *full-scope UK AIFM* may treat *managing an AIF* as not being part of its *SMCR financial activities* for the purposes of this chapter.