

Chapter 4

General organisational requirements

4.2 Persons who effectively direct the business

General requirement

4.2.1 **R** The *senior personnel* of a *common platform firm*, a *management company*, a *full-scope UK AIFM*, or of the *UK branch* of a *non-UK bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[Note: article 9(1)(4) of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 91(1) of *CRD*]

4.2.1A **G** Other *firms* should take account of the *senior personnel rule* (■ SYSC 4.2.1 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

Responsibility of senior personnel of an AIFM

4.2.1B **R** For a *full-scope UK AIFM*, the *senior personnel* must, in complying with ■ SYSC 4.2.1 R, be sufficiently experienced in relation to the investment strategies pursued by the *AIFs* it manages.

[Note: article 8(1)(c) of *AIFMD*]

Composition of management

4.2.2 **R** A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch* of a *non-UK bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in ■ SYSC 4.2.1 R and :

(a) for a *full-scope UK AIFM*, ■ SYSC 4.2.7R; or

(b) for a *common platform firm*, ■ SYSC 4.3A.3R.

[Note: article 9(6) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 13(1) of *CRD*]

4.2.3 **G** In the case of a *body corporate*, the persons referred to in SYSC 4.2.2 R should either be executive *directors* or persons granted executive powers by, and reporting immediately to, the *governing body*. In the case of a *partnership*, they should be active *partners*.

4.2.4 **G** At least two independent minds should be applied to the formulation and implementation of the policies of a *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch of a third country firm*. Where a *firm* nominates just two individuals to direct its business, the *FCA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.

4.2.5 **G** Where there are more than two individuals directing the business of a *common platform firm*, a *management company*, a *full-scope UK AIFM* or the *UK branch of a third country firm*, the *FCA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2 R is met.

Alternative arrangements.....

4.2.6 **R** If a *common platform firm*, (other than a *credit institution* or *AIFM investment firm*) or the *UK branch of a third country firm*, is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

then:

- (3) it must have alternative arrangements in place which ensure:
 - (a) sound and prudent management of the *firm*; and
 - (b) adequate consideration of the interests of *clients* and the integrity of the market; and
- (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

it must have alternative arrangements in place which ensure sound and prudent management of the *firm*.

[Note: article 9(6) second paragraph of *MiFID*]

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- 4.2.7 **R** A *full-scope UK AIFM* must notify the *FCA* of the names of the *senior personnel* of the *firm* and of every person succeeding them in office.
[Note: article 8(1)(c) of *AIFMD*]
- 4.2.8 **G** Where the *senior personnel* of a *full-scope UK AIFM* will carry out a *FCA governing function* and the *firm* has applied for the *FCA's* approval under section 59 of the *Act*, this will be considered sufficient to comply with **SYSC 4.2.7 R**.