

Policy Statement | PS20/15

# Strengthening individual accountability in banking: UK branches of non-EEA banks

August 2015



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
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This policy statement contains a combination of final and near-final PRA rules to implement the Senior Managers and Certification regimes in UK branches of non-EEA banks and PRA-designated investment firms. It also contains minor drafting amendments and corrections to earlier PRA rules to implement the Senior Managers and Certification regimes in UK banks and PRA-designated investment firms.



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## 1 Overview

1.1 This Prudential Regulation Authority (PRA) policy statement provides feedback on CP9/15 *Strengthening accountability in banking: UK branches of foreign banks*,<sup>1</sup> and includes final and near-final rules on the application of the Senior Managers Regime (SMR), Certification Regime and Conduct Rules (collectively the new regimes) to UK branches of non-EEA banks and PRA-designated investment firms (non-EEA branches).<sup>2</sup> It also contains other minor amendments and corrections to the PRA rules made in PS3/15 *Strengthening individual accountability in banking and insurance — responses to CP14/14 and CP26/14*<sup>3</sup> and PS16/15 *Strengthening individual accountability in banking: responses to CP14/14, CP28/14 and CP7/15*,<sup>4</sup> which were published in March and July 2015 respectively.

1.2 The PRA cannot make all the final rules necessary to extend the new regimes to non-EEA branches in full until Parliament approves HM Treasury's order extending the definition of 'relevant authorised person' in section 71A of the Financial Services and Markets Act 2000 (FSMA) to incoming branches (section 71A order). HM Treasury laid the section 71A order before Parliament on 22 July 2015,<sup>5</sup> having previously committed to extend the new regimes to incoming branches in a Written Ministerial Statement published on 3 March 2015.<sup>6</sup> However, at the time of publication of this policy statement, Parliament had not yet approved the section 71A order.

1.3 Notwithstanding the partial dependency on the section 71A order and as the new regimes will become effective for all firms in scope (including non-EEA branches) on 7 March 2016, the PRA considers it important to give all firms as much certainty as possible at this stage to prepare for implementation. Consequently, the rules in this policy statement relating to non-EEA branches fall into two categories:

- final rules extending those elements of the extension of the new regimes to non-EEA branches which the PRA can make using its general rulemaking powers under Part 9A of FSMA notably on the definition of Senior Management Functions (SMFs) and the allocation of responsibilities to Senior Managers; and
- near-final rules covering those elements of the extension of the new regimes to non-EEA branches which require the section 71A order notably certification and grandfathering arrangements. The PRA will finalise these near-final rules as soon as reasonably practicable after Parliament approves the order. The near-final rules in Appendix 2 of this policy statement are not expected to change to any significant extent.

1.4 This policy statement also includes near-final additions to Supervisory Statement 28/15 *Strengthening individual accountability in banking*,<sup>7</sup> which reflect the PRA's expectations of how non-EEA branches should comply with certain aspects of the new regimes. All other

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1 PRA Consultation Paper CP9/15 'Strengthening accountability in banking: UK branches of foreign banks', March 2015; <http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp915.pdf>

2 Under EU law, the Home State Supervisor (HSS) of an EEA bank that operates as a branch in another EEA country is primarily responsible for the prudential supervision of the whole firm (including the branch). As a result, the PRA, as host state supervisor, has only limited direct supervisory powers over UK branches of EEA firms (EEA branches); the PRA has no power to impose fitness requirements on individuals in incoming EEA branches. The PRA's proposals in CP9/15 were therefore limited to non-EEA branches. The FCA, which has direct powers over EEA branches in relation to conduct of business, will extend the new regimes to them subject to the limitations in European law.

3 <http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps315.pdf>

4 <http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1615.pdf>

5 <http://www.legislation.gov.uk/ukdsi/2015/9780111138168>

6 <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150303/wmstext/150303m0001.htm>

7 <http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss2815.pdf>

aspects of SS28/15 as published will apply to non-EEA branches in the same way they apply to UK firms. The PRA will publish a final revised version of SS28/15 and its statement of policy on conditions, time limits and variations of approval<sup>8</sup> when it finalises the near-final rules.

1.5 This policy statement should be read in conjunction with:

- PS3/15 and PS16/15, which set out the PRA's final policy and rules on the application of the new regimes to UK relevant authorised persons, including subsidiaries of overseas banks and PRA-designated investment firms; and
- the FCA's feedback statement FS15/3 *Strengthening accountability in banking: UK branches of foreign banks – Feedback on \*\*\*FCA CP15/10 / PRA CP9/15*, which contains the FCA's near-final rules and guidance on the extension of the FCA's new regimes to both EEA and non-EEA branches.

1.6 The rules relating to the scope of the SMR and allocation of responsibilities to Senior Managers have been tailored to reflect the characteristics of non-EEA branches and the PRA's approach to branch supervision as set out in Supervisory Statement 10/14.<sup>9</sup> Unless otherwise indicated in either this policy statement, the accompanying final and near-final rules and/or SS28/15, all other aspects of the new regimes, as set out in PS3/15 and PS16/15, will apply to non-EEA branches in broadly the same manner as they will apply to UK firms.

## 2 Senior Managers Regime for non-EEA branches

### Scope of the Senior Managers Regime for non-EEA branches

2.1 In CP9/15, the PRA proposed to:

- (a) Require all non-EEA branches to have at least one individual pre-approved by the PRA as a bespoke Senior Management Function (SMF) known as the *Head of Overseas Branch* (SMF19) with the option of having more than one individual if they elected to do so. The individual(s) performing the SMF19 should have the highest degree of individual decision-making authority within the non-EEA branch over activities and areas subject to UK regulation.
- (b) Require non-EEA branches to have additional SMFs pre-approved by the PRA if:
  - there is an individual based in another group entity, either in the United Kingdom or overseas, with direct management or decision-making responsibility over the non-EEA branch's UK-regulated activities; for example a Head of Europe, Middle East and Africa (EMEA). Where this is the case, this individual will be required to be pre-approved as a *Group Entity Senior Manager* (SMF7) of the non-EEA branch; and/or
  - there are individuals performing the *Chief Finance* (SMF2), *Chief Risk* (SMF4) and/or *Head of Internal Audit* (SMF5) functions at the non-EEA branch. This can include individuals performing these SMFs across a range of UK legal entities, such as a UK

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<sup>8</sup> PRA Statement of Policy 'Conditions, time limits and variations of approval', July 2015; <http://www.bankofengland.co.uk/pradocuments/publications/sop/2015/conditions.pdf>

<sup>9</sup> SS10/14 'Supervising international banks: the Prudential Regulation Authority's approach to branch supervision', October 2014; <http://www.bankofengland.co.uk/pradocuments/publications/ss/2014/ss1014.pdf>



Chief Risk Officer (CRO) responsible for risk management at the non-EEA branch and the group's UK subsidiaries.<sup>10</sup>

- (c) Not to bring any non-executive director (NED) functions into scope of the SMR for non-EEA branches. However, individuals performing an executive function in a non-EEA branch's parent or another group undertaking who were previously approved as Non-Executive Directors (CF2) of the non-EEA branch under the Approved Persons Regime (APR) may be performing the *Group Entity Senior Manager* function (SMF7) in respect of that branch and required to be pre-approved or grandfathered accordingly.

2.2 Responses to CP9/15 agreed with the PRA's proposed scope of the SMR for non-EEA branches. Consequently, the PRA does not intend to make any changes to its proposals.

2.3 Responses to CP9/15 did, however, request greater clarity on the circumstances in which individuals based overseas would require pre-approval as a *Group Entity Senior Manager* (SMF7), if possible supported by examples. They also noted that the application of the regime to non-UK based individuals employed by other group entities would increase the existing risk of multiple, overlapping and potentially conflicting regulation by the PRA and/or FCA and the home state supervisors (HSS) of their firms.

2.4 Paragraphs 2.6-2.10 in PS3/15 and 2.12-2.17 of SS28/15 clarify the PRA's expectations of when an individual based in a parent or group entity, either in the United Kingdom or overseas, will require pre-approval as an SMF7, which can be summarised as follows:

- The PRA will not require pre-approval of senior individuals located in overseas parent or group entities whose responsibilities in relation to the United Kingdom are limited to developing the group's overall strategy. The PRA's focus is on those individuals who, irrespective of their location, are directly responsible for implementing the group's strategy in the firm's UK branch or UK subsidiaries. Box 1 illustrates the difference between setting and implementing strategy.
- Consequently, if an individual located overseas is directly responsible for how a non-EEA branch should conduct its UK-regulated activities and has not delegated this responsibility to a Senior Manager based in the United Kingdom, he or she is likely to require pre-approval as an SMF7.
- The PRA does not aim or expect to pre-approve individuals as SMF7s for every non-EEA branch, only where justified by the firm's, group's and/or relevant individual's circumstances.
- In the first instance, firms should consider whether there are any individuals in their parent or group companies, either in the United Kingdom or overseas, who may be performing an SMF7 on behalf of their non-EEA branch. In doing so, they should take into account:
  - the respective organisational structures of the group and the non-EEA branch;
  - the split of responsibilities between group senior management and the non-EEA branch's SMFs based in the UK; and

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<sup>10</sup> Non-EEA branches without a Chief Risk (SMF4) function will nonetheless need to allocate the Prescribed Responsibility "for management of the branch's risk management processes in the UK" to another SMF in the branch.

- whether the non-EEA branch's SMFs based in the UK have appropriate delegated authority from the parent or group to ensure that the branch complies with its UK regulatory obligations.

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### BOX 1: Setting versus implementing strategy

As stated in the Basel Committee on Banking Supervision's revised corporate governance principles for banks,<sup>11</sup> the Chief Risk Officer (CRO) of a bank is "responsible for supporting the board in its engagement with and oversight of the development of the bank's risk appetite and [risk appetite statement] RAS and for translating the risk appetite into a risk limits structure".

Although a non-UK headquartered banking group's risk appetite, RAS and risk limits will be cascaded down and implemented in its overseas entities, including its non-EEA branch, this will not, in itself, bring the group CRO into scope of the SMR.

However, before implementing the group's risk appetite, RAS and risk limits in its non-EEA branch, the firm should ensure that it complies with applicable local regulatory requirements and, if not, make or suggest such modifications as may be necessary. This requirement is reflected in the section on Allocation of Responsibilities in the PRA Rulebook, which includes Prescribed Responsibilities for:

- the management of the branch's risk management processes in the United Kingdom;
- the branch's compliance with the UK regulatory regime applicable to the branch; and
- management of the branch's systems and controls in the United Kingdom

These responsibilities should typically be allocated to one of the branch's SMFs based in the UK, such as the Head of Overseas Branch (SMF19) or, where applicable, the Chief Risk (SMF4) functions. However, if the non-EEA branch does not have any UK-based Senior Managers with appropriate authority to discharge these responsibilities, the firm would need to consider whether the group CRO or another individual based in a parent or group entity should be approved as an SMF7 of the non-EEA branch.

2.5 The PRA is keen to minimise the risk of individuals being unnecessarily exposed to conflicting or overlapping regulatory regimes. However, where an individual located overseas is directly responsible for managing a non-EEA branch's UK-regulated activities, he or she will inevitably be subject to UK regulatory requirements as well as the requirements of his or her HSS.

### Allocation of responsibilities to Senior Managers

2.6 In CP9/15, the PRA and FCA consulted on a customised list of thirteen Prescribed Responsibilities for Senior Managers in non-EEA branches which included several Prescribed Responsibilities shared by the PRA and FCA and covering compliance with the new regimes, governance, risk management and whistleblowing, as well as a number of PRA and FCA-specific Prescribed Responsibilities relevant to each regulator's respective statutory objectives.

2.7 Firms generally supported the proposed list of tailored Prescribed Responsibilities for non-EEA branches but recommended some minor changes. Consequently, the PRA has made some modifications to its list of Prescribed Responsibilities for non-EEA branches. Table 1 below sets out the PRA's proposed and final Prescribed Responsibilities for non-EEA branches.

2.8 The FCA's final rules for non-EEA branches will split what was originally one SMF, the *Overseas Branch Senior Manager* (OBSM) (SMF20) into an *Executive Director* (SMF3) and *Other Local Responsibility* (SMF22) functions (the latter being analogous to the *Other Overall Responsibility* (SMF18) function in UK firms). Consistent with the approach to UK firms, the PRA will allow non-EEA branches to allocate Prescribed Responsibilities to any PRA or FCA SMFs except to the SMF22.

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<sup>11</sup> <http://www.bis.org/bcbs/publ/d328.htm>

## SYSC attestation

2.9 Respondents suggested that the reference in Prescribed Responsibility 11 to the “annual attestation of compliance to the PRA of the branch’s compliance with its obligations” under the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (SYSC attestation) should be deleted.

2.10 The expectation that a senior individual in every non-EEA branch would be responsible for attesting compliance with SYSC to the PRA on an annual basis was introduced in SS10/14, which also indicated that the PRA would review if there was “a continued need for this attestation” once the application of the SMR to non-EEA branches became clearer. The first attestations were sent to the PRA in March 2015.

2.11 Respondents to CP9/15 argued that Prescribed Responsibility 5, which covers “compliance with the UK regulatory system applicable to the branch”, encompasses compliance with the parts of SYSC and the rules in the PRA Rulebook that will replace it. The inclusion of an explicit reference to the SYSC attestation in the Prescribed Responsibilities was therefore seen to complicate matters unnecessarily and certain respondents asked for it to be removed.

2.12 In response to industry feedback and in light of the implementation of the SMR, the PRA will no longer require all non-EEA branches to submit the SYSC attestation annually as a matter of course. The PRA agrees that the inclusion of Prescribed Responsibilities relating to regulatory compliance, risk management and systems and controls will render the need for an annual industry-wide attestation exercise unnecessary.

2.13 The PRA will, however, continue to expect all non-EEA branches to notify it in a timely manner of known or suspected breaches of any applicable sections of the PRA Rulebook which will replace SYSC. The PRA may also ask individual firms or Senior Managers or any other appropriate individual to attest compliance with specific regulatory requirements on an ad hoc basis if it considers that doing so will advance its objectives.

## Whistleblowing

2.14 In CP9/15, the PRA and FCA included a Prescribed Responsibility “for the maintenance of the integrity, independence and effectiveness of the branch’s policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment” (branch whistleblowing responsibility). This Prescribed Responsibility mirrored the equivalent responsibility for UK firms in Allocation of Responsibilities 4.1(19) (UK whistleblowing responsibility).

2.15 In February 2015, the PRA and FCA published CP6/15 *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*,<sup>12</sup> which proposed a package of measures to formalise firms’ whistleblowing arrangements, including further details relating to the UK whistleblowing responsibility. CP6/15 did not cover non-EEA branches although the FCA has signalled an intention to consult on the extension of whistleblowing requirements to a wider range of firms in the near future.

2.16 Against this background, the PRA and FCA have decided that it would be preferable to remove the branch whistleblowing responsibility from their respective rules until there is greater clarity regarding the extension of whistleblowing requirements to non-EEA branches.

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12 <http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp615.pdf>

**TABLE 1: Proposed and final Prescribed Responsibilities for non-EEA branches<sup>13</sup>**

| <b>Proposed Prescribed Responsibilities for non-EEA branches</b>  | <b>Final Prescribed Responsibilities for non-EEA branches</b>   |
|---|---|
| <p><u>Combined PRA/FCA Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>1. Responsibility for the branch's performance of its obligations under the Senior Managers Regime, including implementation and oversight.</li> <li>2. Responsibility for the branch's performance of its obligations under the certification rules.</li> <li>3. Responsibility for compliance with the branch's obligations in relation to its management responsibilities map.</li> <li>4. Management of the branch's risk management processes in the UK.</li> <li>5. Responsibility for the branch's compliance with the UK regulatory regime applicable to the branch.</li> <li>6. Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the branch to the governing body and/or the management body of the firm or, where appropriate, of the parent undertaking or holding company of the firm's group.</li> <li>7. Responsibility for the maintenance of the integrity, independence and effectiveness of the branch's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment.</li> </ol> <p><u>PRA-specific Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>8. Responsibility for management of the branch's systems and controls in the UK.</li> <li>9. Responsibility for the allocation of all UK branch prescribed responsibilities.</li> <li>10. Responsibility for management of the branch's liquidity or, where a liquidity waiver is in place, the submission of information to the PRA on the firm's liquidity position.</li> <li>11. Responsibility for the production and integrity of the branch's financial information and its regulatory reporting in respect of its regulated activities, including the annual attestation of compliance to the PRA of the branch's compliance with its obligations under SYSC.</li> </ol> <p><u>FCA-specific Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>12. Responsibility for the branch's policies and procedures for countering the risk that the branch might be used to further financial crime.</li> <li>13. Responsibility for the branch's policies and procedures for compliance with CASS.</li> </ol> | <p><u>Combined PRA/FCA Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>1. Responsibility for the branch's performance of its obligations under the Senior Managers Regime, including implementation and oversight.</li> <li>2. Responsibility for the branch's performance of its obligations under the <u>employee</u> certification <u>regime rules</u>.</li> <li>3. Responsibility for compliance with the <u>branch's requirements of the regulatory system about the obligations in relation to its management responsibilities map</u>.</li> <li>4. <u>Responsibility for</u> management of the branch's risk management processes in the UK.</li> <li>5. Responsibility for the branch's compliance with the UK regulatory regime applicable to the branch.</li> <li>6. Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the branch to the governing body and/or the management body of the firm or, where appropriate, of the parent undertaking or holding company of the firm's group.</li> <li>7. <del>Responsibility for the maintenance of the integrity, independence and effectiveness of the branch's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment.</del></li> </ol> <p><u>PRA-specific Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>8. Responsibility for management of the branch's systems and controls in the UK.</li> <li>9. Responsibility for the allocation of all UK branch Prescribed Responsibilities.</li> <li>10. Responsibility for management of the branch's liquidity or, where a liquidity waiver is in place, the submission of information to the PRA on the firm's liquidity position.</li> <li>11. Responsibility for the production and integrity of the branch's financial information and its regulatory reporting in respect of its regulated activities, <del>including the annual attestation of compliance to the PRA of the branch's compliance with its obligations under SYSC.</del></li> </ol> <p><u>FCA-specific Prescribed Responsibilities</u></p> <ol style="list-style-type: none"> <li>12. <u>Local</u> responsibility for the branch's policies and procedures for countering the risk that the branch might be used to further financial crime.</li> <li>13. <u>Local</u> responsibility for the branch's <del>policies and procedures for compliance with CASS.</del></li> </ol> |

<sup>13</sup> There are minor differences in the exact wording of certain common Prescribed Responsibilities in the respective PRA and FCA rules due to differences in drafting conventions and house styles. Where this is the case, the underlying provisions should be interpreted as equivalent in substance unless indicated otherwise

### **3 Certification Regime and Conduct Rules for non-EEA branches**

#### **Certification Regime**

3.1 In CP9/15, the PRA proposed to mirror the approach for UK firms and base the scope of its Certification Regime for non-EEA branches on their UK population of Material Risk Takers (MRTs) as defined in Remuneration 3.1 and 3.2. Responses to CP9/15 supported this approach and the PRA is therefore not proposing any changes to it.

3.2 As noted in previous consultations on the new regimes, not all MRTs will be performing a Certification function – some MRTs, including some in non-EEA branches, will be carved-out by virtue of their being Senior Managers. Likewise, individuals whose functions are not related to the UK-regulated activities of the branch, and who therefore do not meet the statutory test for a Certification function will also fall outside the scope of the PRA's Certification Regime.

#### **Conduct Rules**

3.3 In CP9/15, the PRA proposed to mirror the approach for UK firms to apply its Conduct Rules to Senior Managers and employees performing a PRA-specified Certification function in branches (who, as noted above, will be a subset of the branch's MRTs). Firms agreed with this proposed approach and the PRA is therefore not intending to make any changes to it.

3.4 As previously proposed, both Senior Managers and employees performing a PRA-specified Certification function in non-EEA branches will be subject to the three individual Conduct Rules in Conduct Rules 2. Senior Managers will also be subject to the four Senior Manager Conduct Rules in Conduct Rules 3.

### **4 Transition to the new regime**

4.1 By 8 February 2016 all firms must submit a grandfathering notification that informs the regulators of how the firm proposes to grandfather existing approved persons into the new regime. Table 2 maps existing Significant Influence Functions (SIFs) to those SMFs in non-EEA branches into which they are eligible to be grandfathered.

4.2 Although the section 71A order and the grandfathering and transitional provisions will not be made until later in 2015, non-EEA branches are advised to start preparing for implementation as soon as reasonably practicable.

**TABLE 2: Grandfathering table for non-EEA branches**

| Significant Influence Function   | PRA Senior Management Function(s)   | FCA Senior Management Function(s)           |
|--|---|---|
| Director function (CF1)  | Chief Finance function (SMF2)<br>Chief Risk function (SMF4)<br>Head of Internal Audit (SMF5)<br>Group Entity Senior Manager (SMF7)<br>Head of Overseas Branch (SMF19) | Executive director function (SMF3)          |
| Non-executive director (CF2)   | Group Entity Senior Manager (SMF7)  | None  |
| Chief executive (CF3)  | Head of Overseas Branch (SMF19)   | None  |
| Systems and Controls (CF28)  | Chief finance function (SMF2)<br>Chief Risk function (SMF4)<br>Head of Internal Audit (SMF5)  | Other local responsibility function (SMF22) |
| Significant management function (CF29)                                 | Head of Overseas Branch (SMF19)<br>Group Entity Senior Manager (SMF7)   | Other local responsibility function (SMF22) |
| All non-EEA branches to which the function in the first column applies |   |   |
| Compliance oversight function (CF10)                                   | None  | Compliance oversight function (SMF16)       |
| CASS operational oversight function (CF 10A)                           | None  | Other local responsibility function (SMF22) |
| Money laundering reporting function (CF11)                             | None  | Money laundering reporting function (SMF17) |

## 5 Other changes

5.1 The PRA is correcting the commencement date of the requirement for firms to issue certificates to employees performing a Certification function, to bring it into line with the date announced by HM Treasury and the policy previously announced in PS16/15. All relevant authorised persons (including UK branches of non-EEA firms when the final rules on Certification are made for branches) will have until 7 March 2017 to issue certificates confirming that each employee performing a Certification function is fit and proper to do so.

5.2 The final rules published in Appendix 1 also make some other minor amendments to the rules already published for UK relevant authorised persons. These amendments are made primarily to align definitions and drafting discrepancies and to correct minor drafting errors. In particular, there are changes made to the Applications and Notifications Part, amending the hyperlinks to forms to include all forms referred to in that part.

5.3 It may be necessary for the PRA to make consequential amendments to the rules published with this policy statement to align terminology and cross references with the final rules made by the FCA.

## Appendices

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- 1 **PRA Rulebook: CRR Firms Non-CRR Firms: Individual Accountability Instrument (No 3) 2015** available at  
<http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps2015.aspx>

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- 2 **PRA Rulebook: CRR Firms Non-CRR Firms: Individual Accountability Instrument (No .....)** 2015 [near-final rules] available at  
<http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps2015.aspx>

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- 3 **Proposed additions to PRA Supervisory Statement 28/15: Strengthening individual accountability in banking [near-final]**

## Appendix 3: Proposed additions to PRA Supervisory Statement 28/15: Strengthening individual accountability in banking [near-final]

NB: Once all the rules for branches have been finalised, the remainder of SS28/15 will apply to non-EEA branches in the same way it applies to UK firms.

### Scope for incoming third-country branches

2.17 The PRA requires all incoming non-EEA branches to have at least one individual pre-approved as a *Head of Overseas Branch* (SMF19). Consistent with the approach for UK Relevant Firms, incoming third-country branches can elect to have more than one individual pre-approved as an SMF19. Where this is the case, all individuals approved as SMF19s will be deemed accountable for all the responsibilities conferred by that function. SMF19s should have the highest degree of individual decision-making authority in the branch over activities and areas subject to UK regulation.

2.18 In addition, incoming third-country branches are required to have additional specific SMFs pre-approved by the PRA in the following circumstances:

- Where an incoming non-EEA branch has individuals performing the *Chief Finance* (SM2), *Chief Risk* (SMF4) and *Head of Internal Audit* (SMF5) functions. This includes individuals performing these SMFs across an overseas-headquartered banking group's UK legal entities, such as a UK Chief Risk Officer (CRO) with responsibility for risk management across the group's UK subsidiaries as well as the incoming non-EEA branch.
- As noted in paragraphs 2.12 – 2.16 above, where an individual based in a parent or group entity has direct management and/or decision-making responsibility over an incoming non-EEA branch's UK-regulated activities and has not delegated it to the SMF19 or another SMF based in the branch, he or she may require pre-approval as a *Group Entity Senior Manager* (SMF7) of that branch. An example might be a head of Europe, Middle East and Africa (EMEA) who is formally based in or employed in one of the group's UK subsidiaries but makes decisions affecting how the branch carries out its UK-regulated activities. In practice, SMF7s of an incoming non-EEA branch will be based in the UK of but they may also be based overseas.

2.19 NEDs are outside the scope of the SMR for incoming non-EEA branches. However, there may be situations where individuals employed by an incoming non-EEA branch's parent or group company sit on the branch's local management committee (or equivalent) and were correspondingly, previously pre-approved as a *Director* (CF1s) or *Non-Executive Director* (CF2)s of the branch under the APR). These individuals will generally be deemed to perform the *Group Entity Senior Manager function* (SMF7) in respect of the branch and required to be pre-approved accordingly.

### Prescribed Responsibilities for incoming third country branches

2.28 There is a customised set of PRA and FCA Prescribed Responsibilities for incoming non-EEA branches. Consistent with the approach for UK firms, these non-EEA branch-specific Prescribed Responsibilities can be allocated to any SMF in the branch except the FCA's *Other local responsibility* (SMF22) function.