



HM Treasury

# **Regulating individual conduct in banking: UK branches of foreign banks**

**response to the consultation**

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March 2015





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# 1 Introduction

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**1.1** There were 3 non-confidential responses to the consultation from 4 respondents. The three non-confidential responses were from:

- Association of Foreign Banks
- Association for Financial Markets in Europe and the British Bankers' Association (joint response)
- Virgin Money plc

**1.2** Respondents accepted that the Senior Managers and Certification Regime (SM&CR) should apply to UK branches of foreign banks.

**1.3** Respondents raised a number of specific issues about the proposal. The key issues raised by respondents are summarised in Chapter 2 with the government response.



# Key issues for consultation respondents

## 2

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### Possible application to staff based outside the UK

**2.1** Some respondents were concerned about the possible application of the SM&CR to staff based outside the UK, particularly where there are matrix management structures in place or other arrangements under which staff can report to more than one line manager in relation to different activities. One respondent suggested that non-UK individuals should only be in scope if there is a direct link to UK implementation of any decision they take and that line managers of those individuals should only be in scope if they are based in the UK or there is a similar direct link. There was also concern to ensure that there was a recognition that senior management could be based outside the UK and that it was not necessary to change internal structure in order to bring senior managers to the UK.

### Government response

**2.2** The Government appreciates these concerns but believes that they can be addressed by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) in SM&CR rules. Both regulators have committed to applying the SM&CR in a proportionate and appropriate way to branches.

**2.3** The SM&CR can only apply to activities subject to UK regulation. It would be unlikely therefore to apply to individuals responsible for setting a group's strategy worldwide. However, the SM&CR would apply to the individuals responsible for implementing that strategy in the UK branch.

**2.4** Whether the SM&CR would apply to an individual based outside the UK would depend on the facts of the individual case. However, this is most likely to occur where there is nobody of appropriate seniority based in the UK branch with responsibility for a key area or activity subject to regulation in the UK, and an overseas senior manager is directly participating in the management of the UK branch or taking decisions with a direct link to the branch's UK regulated activities. UK regulators will not be able to approve senior managers where the right to determine that they are fit and proper is reserved to another EEA State under a single market directive.

**2.5** In relation to the certification regime, the PRA and FCA expect that certified persons will be based in the UK or have a substantial link to UK customers or activities.

### Application to foreign banks that have but do not use a UK deposit-taking permission

**2.6** One respondent was concerned that the Order would bring into the SM&CR branches with a deposit-taking permission in the UK which they do not use, possibly (if a branch of an EEA bank) as a result of having that permission in their home State. The respondent suggested that a "materiality threshold" could be incorporated into Order so that only those banks which actually accept deposits are within scope of the SM&CR with firms that do not take deposits remaining in the approved persons regime.

## Government response

**2.7** The Government appreciates these concerns but does not consider that it would be appropriate to seek to limit the scope of the SM&CR for UK branches of foreign banks in this way. The PRA and FCA have committed to applying the SM&CR in a proportionate way to branches and can address materiality concerns when making SM&CR rules, if it is appropriate to do so.

**2.8** Foreign banks which do not wish to take deposits in the UK will not need a UK deposit-taking permission. Non-EEA banks which do not want to take deposits in the UK, will not need to apply for a deposit-taking permission from UK regulators. For EEA banks, the permission to take deposits in the UK is, in effect, given by the home State regulator when it notifies UK regulators of its consent to the 'passporting' under the relevant single market directive. EEA banks which do not wish to take deposits in the UK can ask their home State authority to notify the UK regulators only of the regulated activities they wish to perform here.

## Obtaining personal information subject to overseas employment or data protection law

**2.9** One respondent was concerned that significant personal information about individuals may be required from overseas legal entities to comply with SM&CR requirements and that it may be difficult to acquire this information due to local employment or data protection law.

## Government response

**2.10** The Government appreciates this concern but believes that it is a more general issue that would not just apply to UK branches of foreign banks. UK subsidiaries of foreign banks transferring staff from overseas affiliates or UK banks seeking to employ individuals previously employed abroad may also need to obtain information about the candidates from overseas sources.

**2.11** Firms will always be constrained by employment law and data protection restrictions in overseas jurisdictions. UK regulators require them to take reasonable steps to comply with the regulatory referencing requirements, which can include a requirement to ask for the information.

**2.12** The PRA and FCA are able to take account of the restrictions that foreign law may impose on the disclosure of information in considering whether a UK firm or UK branch has complied with UK regulatory requirements.

## Time for implementation

**2.13** Respondents were concerned that branches should have adequate time to implement SM&CR requirements. One respondent considered that the SM&CR should be implemented for both UK banks and UK branches of foreign banks at the same time to ensure consistent impact across the UK banking market.

## Government response

**2.14** The Government agrees that firms should have adequate time to prepare for the introduction of the SM&CR. Following discussions with the FCA and PRA, the Government has decided that the SM&CR should come into force for all firms (including UK branches of foreign banks) on 7 March 2016. All firms will have until 8 February 2016 to notify the regulators of

the names of the persons who are approved under current FSMA requirements who are to be senior managers under the SM&CR.

## **Application of rules of conduct to staff of UK branches**

**2.15** One respondent asked whether it was intended to apply the new rules of conduct to staff in UK branches of foreign banks.

### **Government response**

**2.16** The PRA and FCA will be able to make rules of conduct for staff in UK branches of foreign banks. Both regulators will be able to make different rules for different types of staff or branch, and different rules for UK branches and UK banks, if they consider it appropriate to do so.



### **HM Treasury contacts**

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