

1 June 2023

HM Treasury  
1 Horse Guards Road London SW1A 2HQ, United Kingdom



Japanese Bankers Association

## **JBA comments on the consultation “*Senior Managers & Certification Regime: a Call for Evidence*”**

Dear Sirs/Madams:

The Japanese Bankers Association<sup>1</sup> (JBA) appreciates the opportunity to provide our comments on HM Treasury’s (HMT) consultation: “Senior Managers & Certification Regime: a Call for Evidence” (hereafter the “Call for Evidence”) on 30 March 2023.

The JBA member banks, as non-UK financial institutions, have operations in the UK. We hope our comments will contribute to the policy debate going forward. In addition to the responses that we have made to specific questions; we would like to provide general comments as follows.

### **General comment**

The JBA agrees with the objectives of the Senior Managers & Certification Regime (hereinafter the “SM&CR”), which seeks to promote safety and soundness, reduce harm to consumers and strengthen market functioning by requiring that financial services professionals are individually accountable to their employers and regulators.

On the other hand, as we have stated in comment letters on the SM&CR's consultation paper<sup>2</sup>, we believe that the subsidiaries/branches of globally active non-UK financial institutions are adequately governed by local management and that the SM&CR has room for further improvement from this perspective. In particular, we expect the SM&CR to become a better regulation by reviewing the balance between collective decision-making considering the existing governance structures of non-UK financial institutions and adopting of more appropriate proportionality based on size.

Please refer to the following sections for specific comments.

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<sup>1</sup> The Japanese Bankers Association is the leading trade association for banks, bank holding companies and bankers associations in Japan. As of June 1, 2023, JBA has 114 Full Members (banks), 3 Bank Holding Company Members (bank holding companies), 76 Associate Members (banks & bank holding companies), 51 Special Members (regionally-based bankers associations) and one Sub-Associate Member for a total of 245 members.

<sup>2</sup> <https://www.zenginkyo.or.jp/fileadmin/res/abstract/opinion/opinion261041.pdf> and <https://www.zenginkyo.or.jp/fileadmin/res/abstract/opinion/opinion270535.pdf>

## Specific comments

Q3: Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

(Our response)

Since the regime was introduced, changes have been made to the number of Senior Management Functions (SMF), the roles that require approval by the regulator, and the list of prescribed responsibilities. For instance, a Chief Operations Function was added to the list of Senior Management roles in 2017 and firms were required to allocate responsibility for identifying and managing climate-related financial risk to a Senior Manager in 2019.

While it is understood that the regime should be able to evolve in order to meet the regulatory needs of the time, there is a concern that using the regime to address every new issue of concern will cause it to become overburdensome.

Also, the scope of the SM&CR should be more proportionate. Especially for smaller firms, the current scope of the SM&CR is relatively broad and the administrative burden is quite heavy.

Q4: The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years.

(Our response)

As stated in the response to Question 3, the current scope of the SM&CR is relatively broad and the administrative burden is quite heavy. It has resulted in a costly and time-consuming administrative burden, especially for smaller firms.

Q5: What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

(Our response)

For the UK to enhance its international competitiveness as a significant global financial centre, it should provide further clarity on the application of the SM&CR to staff based at global headquarters and their role when implementing global strategy in the UK branch/subsidiary.

It is understood that the SM&CR has been successful in enhancing the culture of the UK financial services sector as well creating a high standard for governance and accountability for senior roles. However, the regime's distinction between developing global strategies versus local implementation, that requires the allocation to an SMF, may lead to decision making being localised in the UK. Furthermore, the regime's distinction between developing strategy, which can be done by global staff who do not hold an SMF role, versus local implementation of that strategy, which must be done by a locally approved SMF, is difficult to

separate in practice for most firms who operate global business and global control functions. A consequence is that the SMF regime may lead to decision making being overly localised in the UK, as SMFs attempt to demonstrate their independent decision-making, which could result in UK subsidiaries/branches being viewed as less strategically important entities outside the UK, and therefore the UK subsidiaries/branches attracting less investment and support from the global headquarters.

Firms may also be encouraged to put in place purely administrative reporting lines and structures of governance from the UK as a cure for compliance with the SM&CR while ensuring a globally coordinated approach. However, these additional compliance and administrative structures are not necessary if consideration could be given to solutions which allow UK subsidiaries/branches to rely on group level individuals who are responsible for elements of the UK business but who do not have to become SMFs and/or be based in the UK. For example, there may be individuals based outside the UK who are better placed to run global business lines which include UK business activity. In such instances, in line with the SM&CR, the individual has limited authority for delivering the UK strategy and risk appetite unless they become an SMF. If the SM&CR framework could allow for “gaps” in the individual allocation of responsibility for the UK entity, such that some of the responsibilities are not covered by the UK SMCR regime but are captured by a different governance structure, individuals outside of the UK may have a greater appetite for taking on global roles that also cover the UK.

To ensure accountability at the UK level, we would like to suggest that the decision making and final implementation of the strategy by the non-SMF non-UK individual should be allowed if collective decision making at the board or equivalent level provide support for it.

We strongly believe that a greater allowance for collective decision making in combination with the ability to create global roles with better placed individuals with the appropriate expertise that can be held outside of the SM&CR will boost international activity within the UK but still maintain safety and soundness with robust accountability structures and appropriate expertise.

Additionally, differences on remuneration requirements between the UK and other jurisdictions are a significant discouragement to internationally mobile managers relocating to the UK. This is mainly in the case of variable remuneration, with deferral periods longer than those of other comparable financial centres.

This is particularly applicable for non-UK financial institutions who may have to combine the application of UK rules with additional requirements from their home state.

Q6: Are there examples of other regimes that the government could learn from?
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(Our response)

The US regulatory regimes allow a great deal of flexibility for both regulators and financial institutions. As set out in “Appendix to DP 1/23 Review of the Senior Managers and Certification Regime (SM&CR)” (Appendix),

US banking authorities can ensure individual accountability through the use of existing regulations where individuals violate laws or regulations, engage in ‘unsafe and unsound’ practices or breach a fiduciary duty.

In addition, as set out in the Appendix, EU Member States focus on implementing fitness and propriety requirements at the ‘management body’ level. This looks to achieve high quality and robust collective decision making rather than attempting to oversee individualised decision-making structures.

In all the regimes mentioned above, the process around the governance and accountability regimes is principle based and the focus is on the use of existing laws to encourage good executive behaviour.

The SM&CR in the UK has been able to improve the culture of the financial services sector and better regulate senior persons in the banking industry. However, to help achieve a level playing field in the UK for financial services competitiveness globally, a more principle based regulatory approach which allows for decision making on a collective basis should be adopted for some elements of the SM&CR outside the core SMF functions.

Q8: Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these?

Respondents should provide as much detail as possible to help build the fullest picture of any issues.

(Our response)

Senior executives, non-executives and business line heads in international financial institutions often perform both UK roles and global roles. The SM&CR should take these cases into account, as the procedures by the SM&CR may be unduly burdensome compared to the share of the UK activities in their global roles.

Global roles do not necessarily need to be performed within the UK but can bring a great deal of insight and enhanced international competitiveness into UK business activity. In line with the core principles of the SM&CR, these individuals may have the most appropriate expertise, competence and experience to also run the related UK businesses and best meet the “fit and proper” test. However, bringing these individuals within the scope of the SM&CR has proven to be unduly burdensome. It has meant that individuals spend a large amount of administrative and compliance time maintaining their obligations with respect to the SM&CR which is disproportionate to the amount of power that they exercise with respect to the UK activity in their global role.

Additionally, individuals in global roles are already heavily scrutinised under the home country’s legislation. An additional, documentation heavy UK regime is burdensome. As a result, either individuals refuse to take on the global role with respect to the UK, or they only take on the global role after sufficient education and training from local legal and compliance representatives, which involves a great deal of human and capital resources as well as time. To ease these burdens, consideration should be given to applying substitute

compliance.

The SM&CR should include a mechanism whereby a global role can be created that includes coverage of UK roles but does not have to become an SMF. As an alternative, it could be supported by the local board/executive function in order to achieve good governance.

A regime whereby a global role could be created, supported by collective decision making at the UK level, would be more palatable. It can avoid the need for individuals to deal with heavy certification, documentation and compliance burdens but still achieve accountability and transparent decision making through principles.

Q9: Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?
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(Our response)

Please see response to Question 3.

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We thank the HMT for the opportunity to comment on the Call for Evidence and hope our comments will contribute to further consideration.

Yours faithfully,

Japanese Bankers Association