

Senior managers and certification regime: Certification regime

## Chapter 27

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certification regime:  
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**27.6 Other exclusions**

**Single Market Directives**

**27.6.1** **G** Under section 63E(7) of the *Act* (to the extent that it continues in force under the standstill direction), this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under certain European legislation to an authority in a country or territory outside the *United Kingdom*. The standstill direction means the standstill direction as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “FCA Transitional Direction”.

**Insolvency**

**27.6.2** **R** This chapter does not apply to a function performed by a *person* acting as:

- (1) an insolvency practitioner under section 388 of the Insolvency Act 1986;
- (2) a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

**Non-executive directors**

**27.6.3** **R** A function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification function* for that *firm*.

**Benchmarks**

**27.6.4** **R**

- (1) This chapter does not apply to a *firm* in relation to *benchmark activities*.
- (2) In particular, this chapter does not apply to a *pure benchmark SMCR firm*.

**27.6.5** **G** Some benchmark activities are within the certification regime under **■ SYSC TP 7.5** (Transitional provisions about benchmarks and the certification regime).

**Overall responsibility**

**27.6.6** **R** Performing any of the following is not an *FCA certification function*:

- (1) a responsibility allocated to an *SMF manager* under **■ SYSC 26.3** (Main rules); or
- (2) a responsibility allocated to someone under **■ SYSC 26.4.6R** (Exclusion where the 12-week rule applies).

**27.6.7** **R** **■ SYSC 27.6.6R** does not apply to having overall or local responsibility for the *SMCR legal function*.

**Administrators**

**27.6.8** **R** A function in paragraph (A) of row (6) of the table in **■ COCON 1.1.2R** (Table: To whom does COCON apply?) is not an *FCA certification function*.

**Exclusions: Sole traders**

**27.6.9** **G**

- (1) An individual *sole trader* will not themselves be a *certification employee*.
- (2) However members of a *sole trader's* staff may be.
- (3) Therefore the certification regime does not apply to a *sole trader* with no *employees*.

**Exclusions: Internally managed AIFs**

**27.6.10** **R** This chapter does not apply to a *firm* that meets the following conditions:

- (1) it is an *internally managed AIF*;
- (2) it is a *body corporate*; and
- (3) it is not a *collective investment scheme*.