Chapter 27

Senior managers and certification regime: Certification regime
27.2 Requirements of the certification regime

General

27.2.1 G Most of the requirements of the certification regime are in the Act. This section summarises and gives guidance on them.

27.2.2 G [SYSC TP 5, SYSC TP 7 and SYSC TP 8] contain transitional material about the certification regime. This includes material about the fact that:

(1) the requirement in [SYSC 27.2.3G] did not come into force at the same time as the rest of the certification regime; and

(2) the certification regime came into force at different times for different types of firm.

Basic requirements

27.2.3 G Under section 63E(1) of the Act, a firm must take reasonable care to ensure that no employee of the firm performs an FCA certification function under an arrangement entered into by the firm in relation to the carrying on by that firm of a regulated activity, unless the employee has a valid certificate issued by that firm to perform the function to which the certificate relates.

Fitness to act

27.2.4 G Under section 63F of the Act, a firm may issue a certificate to a person only if the firm is satisfied that the person is a fit and proper person to perform the FCA certification function to which the certificate relates.

27.2.5 G Under section 63F of the Act, in assessing if a person is fit and proper to perform an FCA certification function, a firm must have regard, in particular, to whether that person:

(1) has obtained a qualification;

(2) has undergone, or is undergoing, training;

(3) possesses a level of competence; or

(4) has the personal characteristics, required by general rules made by the FCA.
27.2.6 FIT 1.3 provides guidance to firms about the criteria that the FCA would expect the firm to consider in assessing if a person is fit and proper to perform an FCA certification function.

27.2.7 SYSC 22 (Regulatory references) deals with obtaining references from a previous employer when a firm is planning to appoint someone to perform a certification function as part of its assessment of whether that person is fit and proper.

27.2.8 (1) A person seconded from a contractor may fall into the certification regime. The material in SYSC 27.4.1G is relevant to when this is the case.

(2) In deciding whether a person seconded from a contractor is fit and proper, the firm may take into account information and references from the contractor.

(3) In deciding how much reliance to put on the contractor, the firm should take into account:

(a) the familiarity of the contractor with the obligations of firms under this chapter, the corresponding PRA requirements (if the firm is a PRA-authorised person) and the requirements of the Act described in this chapter;

(b) whether any reference directly addresses the criteria in FIT; and

(c) the degree to which the firm believes it can rely on the contractor’s judgement about the secondee’s fitness and properness and the grounds for that belief.

Issuing and renewing certificates

27.2.9 Under section 63F of the Act, a certificate issued by a firm to a person must:

(1) state that the firm is satisfied that the person is fit and proper to perform the function to which the certificate relates; and

(2) set out the aspects of the affairs of the firm in which the person will be involved in performing the function.

27.2.10 (1) The Act says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.

(2) The FCA believes that the Act allows a firm to draft a certificate to expire after fewer than 12 months. The FCA interprets the Act in this way because to require a firm to make a certificate last longer than the firm thinks best is likely to make it harder for the firm to ensure the fitness of its certification employees. That would undermine the purpose of the certification regime in the Act.

(3) A certificate cannot be drafted to last more than 12 months.

27.2.11 Under section 63F of the Act, if, after having considered if a person is fit and proper to perform an FCA certification function, a firm decides not to issue a
certificate to that person, the firm must give the person a notice in writing stating:

(1) what steps (if any) the firm proposes to take in relation to the person as a result of the decision; and

(2) the reasons for proposing to take those steps.

If, after having considered whether a person is fit and proper to perform an FCA certification function, a firm decides not to issue a certificate to that person, it should consider if the circumstances warrant making a notification to the FCA for a breach of the rules in COCON pursuant to SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

Under section 63F of the Act, a firm must maintain a record of every employee who has a valid certificate issued by it.

(1) A firm need not issue multiple certificates for one of its employees even if they perform several FCA certification functions as part of the same job.

(2) Similarly, a firm need not issue multiple certificates for one of its employees who performs an FCA certification function that is made up of a number of different functions.

(3) An example of an FCA certification function in (2) is the material risk taker FCA certification function described in SYSC 27.8.14R. SYSC 27.8.14R says that each function carried out by someone who is covered by that rule is an FCA certification function.

(4) Rather than having to issue multiple certificates, a firm may, in a single certificate, describe the employee's functions that involve an FCA certification function in broad terms, and without listing all the activities that the function may involve.

(5) A firm should assess whether the employee is fit and proper to perform all aspects of the employee's functions that involve an FCA certification function as described by a certificate.

(6) Although a firm does not need to issue multiple certificates for an employee who performs several different certification functions, under the requirements in SUP 16.26 (Reporting of Directory persons) the firm will need to specify each of the certification functions which the employee has been assessed as fit and proper to perform and for which the employee has a certificate at the time of the report.

(1) In cases where a certification employee's role changes to involve a new FCA certification function part way through the 12-month period for which their certificate is valid, the firm may need to reissue the certificate.

(2) If that new function has different requirements relating to:

(a) personal characteristics;
(b) the level of competence, knowledge and experience;
(c) qualifications; or
(d) training;
the FCA would expect the firm to assess whether the employee is fit and proper to perform that new function before they start it.

(3) In such a case, the firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.

(4) A firm may not need to issue a new certificate if:
(a) applying the conditions in paragraph (2), the firm concludes that no re-assessment is required; and
(b) the certificate is drafted broadly enough to cover the new FCA certification function.

(5) Paragraphs (1) to (4) also apply if a certification employee’s role changes part way through the 12-month period without the new role involving a new FCA certification function.

(1) This paragraph gives further guidance on the flexibility a firm has in drafting its certificates.

(2) A certificate may cover functions that a certification employee is not currently performing, as long as the firm has assessed the employee’s fitness for these additional functions. This is subject to (3).

(3) When a firm is deciding what a certificate can cover beyond the functions that the certification employee is currently performing, it should take the factors in SYSC 27.2.15G(2) into account. A certificate should not normally cover an additional function if SYSC 27.2.15G(2) would require the firm to consider the employee’s fitness before allowing them to perform it.

(4) A firm may, if it wishes, restrict a certificate to the functions that the certification employee is currently performing rather than drafting the certificate more widely as described in (2) and (3).

(5) SYSC 27.2.10G deals with the flexibility a firm has in choosing the period for which a certificate lasts.