

Senior managers and certification regime: Certification regime

Chapter 27

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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 **G** ■ 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 **G** ■ 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 **G**
 - (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 **G** 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 **G**
 - (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 **G** 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.

27.2.12 G 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).

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

27.2.14 G

- (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.

27.2.15 G

- (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*.

27.2.16

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- (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.

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