

Chapter 27

Senior managers and certification regime: Certification regime

		<div><div></div><div>27.6</div><div>Other exclusions</div></div>
		<div>Single Market Directives</div>
27.6.1	G	<p>Under section 63E(7) of the <i>Act</i> (to the extent that it continues in force under the standstill direction), this chapter does not apply to an arrangement which allows an <i>employee</i> to perform a function if the question of whether the <i>employee</i> is fit and proper to perform the function is reserved under certain European legislation to an authority in a country or territory outside the <i>United Kingdom</i>. The standstill direction means the standstill direction as defined in the direction made by the <i>FCA</i> under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on <i>IP completion day</i> and is titled “FCA Transitional Direction”.</p>
		<div>Insolvency</div>
27.6.2	R	<p>This chapter does not apply to a function performed by a <i>person</i> acting as:</p> <div><div>(1)</div><div>an insolvency practitioner under section 388 of the Insolvency Act 1986;</div></div> <div><div>(2)</div><div>a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;</div></div> <div><div>(3)</div><div>an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or</div></div> <div><div>(4)</div><div>a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.</div></div>
		<div>Non-executive directors</div>
27.6.3	R	<p>A function performed by a <i>non-executive director</i> of a <i>firm</i> acting as such is not an <i>FCA certification function</i> for that <i>firm</i>.</p>
		<div>Benchmarks</div>
27.6.4	R	<div><div>(1)</div><div>This chapter does not apply to a <i>firm</i> in relation to <i>benchmark activities</i>.</div></div> <div><div>(2)</div><div>In particular, this chapter does not apply to a <i>pure benchmark SMCR firm</i>.</div></div>

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*.