

SENIOR MANAGERS AND CERTIFICATION REGIME (SMCR)

OVERSEAS EMPLOYEES – APPLICATION OF CERTIFICATION REGIME

Box 1 Significant Harm Functions

A Significant Harm Function is defined as a function that meets the following conditions:

- It is performed in relation to the carrying on of a regulated activity by an authorised person;
- It requires the person performing it to be involved in one or more aspects of the relevant authorised person's affairs, so far as relating to that regulated activity; and
- Those aspects involve, or might involve, a risk of significant harm to the relevant authorised person or to any of its customers.

The FCA has designated the following Significant Harm Functions under its Certification Regime:

- Significant management function;
- Proprietary trader function;
- CASS oversight function;
- Functions requiring qualifications;
- Client dealing function (*see Box 3 opposite*);
- Managers of certification employees (who are not Senior Managers);
- Material Risk Takers (*see Box 2 below*); and
- Algorithmic trading function.

The PRA has designated only Material Risk Takers (banks and insurers) and Key Function Holders (insurers) under its Certification Regime.

Box 2 Material Risk Takers (MRTs)

The concept of MRTs already exists under the PRA and FCA Remuneration Codes (such staff are also known as "Remuneration Code Staff").

An MRT is defined according to the type of firm by reference to the relevant Remuneration Code.

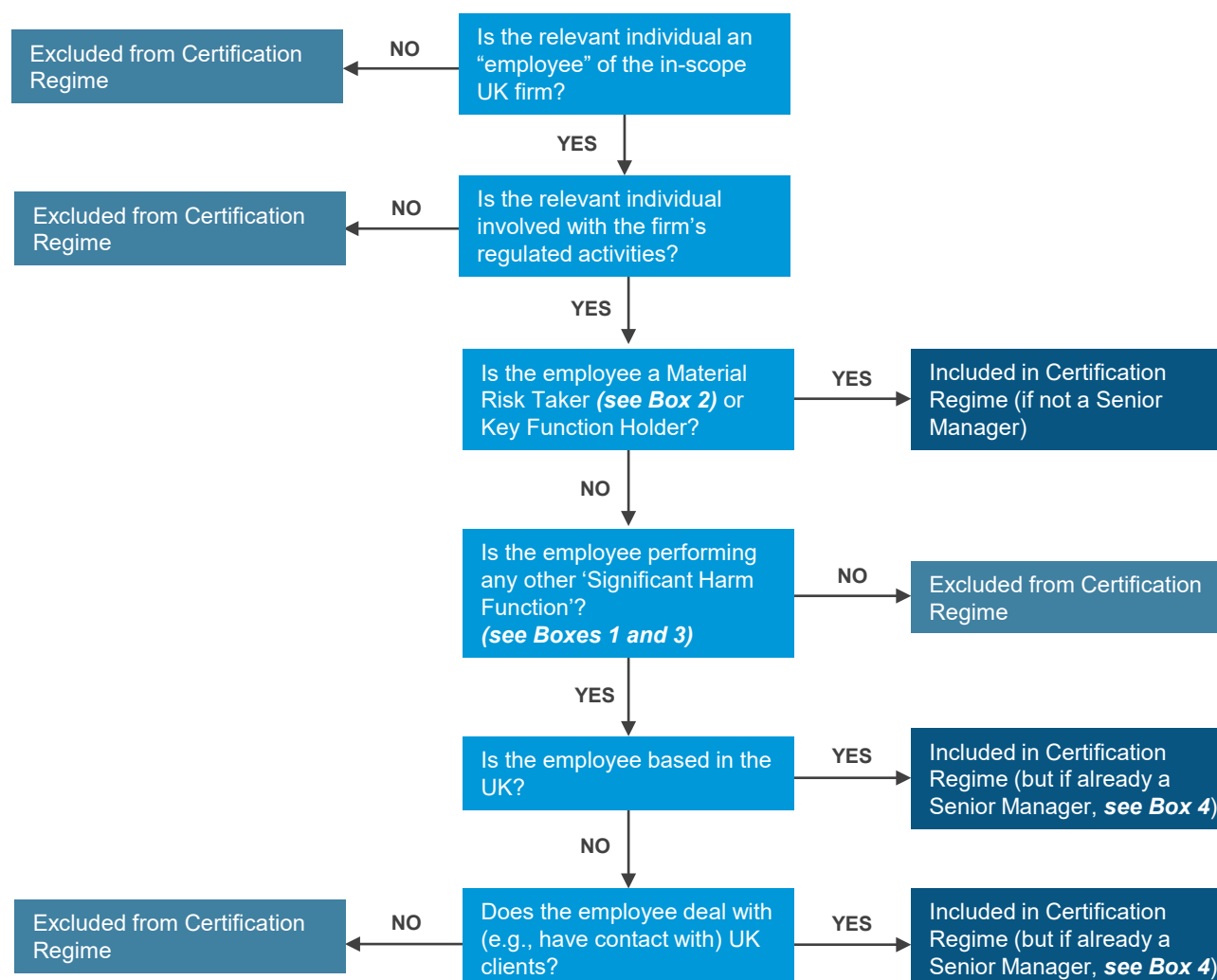
The Certification Regime applies to:

1. Employees
2. Whose role / function requires the person performing it to be involved in aspects of the firm's business that relate to regulated activities, and those aspects involve or might involve a risk of significant harm to the firm or its customers

The roles / functions described at (2) above are known as "Significant Harm Functions" or "Certification Functions".

An "employee" is a person who: (a) personally provides, or is under an obligation personally to provide, services to the firm under an arrangement made between the firm and the person providing the services or another person; *and* (b) is subject to (or to the right of) supervision, direction or control by the firm as to the manner in which those services are provided.

An arrangement need not be a written contract, and could arise, for example, by conduct, custom and practice.



Box 3 Client Dealing Function

This function applies to any individual dealing with persons (most obviously, clients), or the property of such persons, in a manner substantially connected with the carrying on of regulated activities by the firm. In this context, "dealing with" someone includes having contact with that person. However, the FCA has clarified that individuals performing solely administrative roles are not caught.

This function covers those who:

- Advise on investments (other than a non-investment insurance contract) and perform other related functions, such as dealing and arranging;
- Deal, as principal or agent, and arrange (bring about) deals in investments;
- Act in the capacity of an investment manager and all functions connected with this;
- Give advice in connection with corporate finance business, or other functions related to this; and
- Act as a bidder's representative.

Box 4 Interaction with the SMR

The Senior Managers Regime and the Certification Regime are not mutually exclusive, and so there may be instances where Senior Managers also need to be certified.

This will depend on the function, as some Certification Functions will, by their nature and/or description, exclude Senior Managers (e.g., management-related functions). However, Senior Managers could require certification if, for example, they are carrying on any of the trading or dealing Certification Functions.

Generally speaking, if a Senior Manager is performing a Certification Function that is very different to what they are doing as a Senior Manager, they must also be certified.