

Senior Managers and Certification Regime What's next?

Implementation of the Senior Managers Regime: what does this mean for my firm?

The Senior Managers and Certification Regime (SMCR) was introduced in banks in 2016 and will be rolled out to all FCA-regulated firms by 2018. The FCA is expected imminently to issue a consultation paper explaining how the SMCR will apply to these firms.

In practice this is likely to mean:

Senior Managers:

- Specific regulatory roles and responsibilities must be allocated to Senior Managers.
- Senior Managers will be accountable to the regulator and subject to potential enforcement action for breaches in their area(s) of responsibility.
- Responsibilities Maps will need to be provided to the regulator,

showing how responsibilities have been allocated, and these must be kept up to date.

- A Statement of Responsibilities will also be required for each Senior Manager.

Certification:

- This covers the layer of employees below Senior Managers. Many, but not all, will currently be FCA-approved persons.

- It will be the firms' responsibility- no longer the FCA's- to ensure they are fit and proper. This will include obtaining (and giving) detailed references.

New Conduct Rules:

- These rules will apply much more widely than the current approved persons regime.
- Firms must train staff on the Conduct Rules' application to their particular roles.

SMCR challenges: how we can help

Implementation in banks was a protracted and complex exercise, so firms will be well advised to start work on implementation as soon as possible after the consultation paper is issued.

The SMCR contains detailed and prescriptive rules that can be an uneasy fit with a firm's existing management and governance framework.

We are used to the sensitivities here and can assist firms in implementing the rules in a way that is practical and, as far as possible, works with the firm's existing structure.

The regime has particular challenges for overseas-headquartered firms, as global senior management are understandably reluctant to be subject to the risks and requirements of a UK accountability regime.

Whilst we would seek to keep structural change to a minimum, we can identify situations where local governance arrangements may need to be strengthened in order to keep global heads out of the regime.

Many employees will be subject to the regulator's jurisdiction for the first time, as the scope is much wider than the current approved persons regime.

We are familiar with the changes that firms may need to make to their performance management and disciplinary procedures as well as the implications for their D&O cover, employment contracts and staff handbook. We can also assist firms with implementing the training required by the rules or briefing senior management.

Dedicated team of specialists

- Our team includes ex-FCA staff and we continue to have close contacts with the regulator. Celyn Armstrong, one of our partners, was closely involved in creating the regime when he was at the FCA. This means we have a good sense of the likely attitude of the FCA to different approaches to implementation.
- HR and employment issues are key to successful SMCR implementation; for this reason our multidisciplinary team is made up of both regulatory and employment lawyers.
- We have extensive experience in assisting with SMCR implementation projects, having advised many banks and insurers

on their projects. Clients we have advised range from boutique operations to the largest global banks, so we understand the need for a proportionate approach according to the size and complexity of the firm. We are also well placed to advise on market practice in this area.

Key contacts

If you would like to discuss the implications of the SMCR further please contact one of the key contacts listed below:

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