Global Financial Services Regulatory Guide - United Kingdom

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

In the UK, two regulators are primarily responsible for the authorization and supervision of financial institutions: the Prudential Regulation Authority (PRA) (part of the Bank of England) and the Financial Conduct Authority (FCA). The allocation of responsibilities between the PRA and the FCA is as follows:

The PRA regulates banks (deposit takers), insurers and large investment firms (i.e., investment banks) for prudential purposes, including in relation to regulatory capital requirements.

The FCA regulates all other firms for prudential purposes. These firms include, for example, investment firms, asset managers, hedge funds, brokers, financial advisers, insurance intermediaries, consumer credit firms and payment providers. These firms are called "solo-regulated firms."

The FCA supervises all types of firms for conduct purposes. Firms supervised by the PRA for prudential purposes are also supervised by the FCA for conduct purposes. These firms are called "dual-regulated firms."

The Bank of England is responsible for the macro-supervision of the banking and financial services industries, including financial stability. Under this remit, it is empowered to supervise financial market infrastructures, including recognized interbank payment systems, central counterparties, central securities depositories, and settlement systems.

The Payment Systems Regulator (PSR) is an economic regulator in respect of various payments systems, including Pay UK, the retail payment systems operator (comprising Bacs, Faster Payments and the Image Clearing System), CHAPS, Mastercard and Visa Europe. The PSR looks to see that payment systems are operated and developed in the interests of users while promoting competition and innovation.

HM Treasury is the UK government department responsible for financial services policy.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The regulation of financial services in the UK is governed by the Financial Services and Markets Act 2000 (FSMA). FSMA is the main framework law in the UK for the banking, financial services and insurance industries, and regulates the carrying on of certain activities that are in the nature of financial services. There are two fundamental restrictions that apply:

the general prohibition on carrying out regulated activities in the UK

the restriction on issuing financial promotions which are capable of having an effect in the UK

**General Prohibition**: section 19 FSMA prohibits a person from carrying on a "regulated activity" in the UK, or purporting to do so, unless the person is an authorized person (i.e., they hold permission to carry out particular regulated activities by the PRA or the FCA) or an exempt person, or they can rely on an exclusion. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) sets out an exhaustive list of regulated activities that give rise to a licensing obligation under FSMA (unless an exclusion applies). Persons who carry on "regulated activities" on a cross-border basis from outside the UK may also be deemed to be carrying on regulated activities in the UK in certain circumstances.

**Financial Promotion Restriction**: section 21 FSMA prohibits a person from communicating, in the course of business, an invitation or inducement to engage in investment activity, unless they are an authorized person, an exclusion applies, or the communication has been approved by an authorized person permitted to approve financial promotions in accordance with the FCAs rules. This restriction covers advertising and marketing activities. In the case of a communication originating outside of the UK; however, the restriction only applies if the communication is capable of having an effect in the UK. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO) sets out exemptions to the financial promotion restriction.

These restrictions apply separately to one another: it is possible that a particular activity is not considered to be carrying on a regulated activity in the UK (or is exempt from regulation), but sending communications to customers in relation to that activity may still be a breach of the financial promotion restriction. A breach of either of these restrictions is a criminal offense and may result in certain agreements being unenforceable. Persons who suffer loss as a result of an unauthorized person breaching either of the above restrictions may also have an action against the unauthorized person to make good that loss.

There are two other notable authorization regimes for financial services in the UK. The Payment Services Regulations 2017 (PSRs) govern the authorization and prudential requirements applying to payment services. The regulatory regime applying to electronic money (e-money) institutions is set out in the Electronic Money Regulations 2011 (EMRs) and parts of the PSRs.

Both the FCA and the PRA issue rules and guidance which apply to the firms that they regulate. These rules and guidance are applicable primarily to UK-regulated or -supervised firms but are also relevant in certain respects to non-UK firms. For UK-regulated firms, the rules and guidance contained in the FCA Handbook (and PRA Rulebook, if applicable) form the bedrock of their legal and regulatory obligations.

Much of the current regulatory requirements in the UK are derived from European Union directives and regulations that applied in the UK prior to Brexit and were "onshored" at the end of the Brexit transition period. This onshored body of legislation and technical standards has been amended to correct deficiencies as a result of Brexit (for example, by substituting references to EU bodies for UK ones or limiting territorial scope). However, the UK is undertaking a program of regulatory reform that is likely to result in divergence from the EU financial services regulatory framework where divergence might be best for UK consumers and markets. At the time of writing, HM Treasury is undertaking a number of workstreams relating to onshored EU legislation and technical standards as part of its wider reforms to UK financial services regulation.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

An activity is regulated in the UK if it: (a) is of a specified kind that (b) relates to a specified investment or, where it relates to a specified activity, property of any kind and (c) is carried on by way of business (d) in the UK. The specified activities and investments are set out in the RAO.

A broad range of activities are set out in the RAO, including the following:

Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

Issuing e-money – E-money is a prepaid electronic payment product that can be card- or account-based.

Carrying on payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

Consumer lending – This covers both lending to consumers as well as activities such as crowdfunding, credit brokerage and debt collection on behalf of third parties.

Arranging regulated mortgage contracts – This relates to the sale of certain residential mortgage contracts.

Carrying on insurance business – This relates to effecting and carrying out contracts of insurance, both life and general.

Providing investment advice – Providing advice on most categories of investments is a regulated activity in the UK. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

Trading in securities and other investments as principal or as agent – This covers brokers as well as most firms engaged in proprietary trading.

Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions. It is very broad and covers infrastructure providers, including electronic communication networks that route orders for execution.

Insurance mediation activities – UK regulation covers various insurance broking activities as well as the handling of claims on behalf of the insured.

Investment management – Managing investments on behalf of another person is a regulated activity. Specific permission is required where a person carries on this activity in relation to an alternative investment fund (AIF).

Establishing, operating and winding up a collective investment scheme – Most types of funds are regarded as collective investment schemes under UK law. This extends to structures such as open-ended bodies corporate, unit trusts and partnerships. Certain closed-ended bodies corporate are also categorized as AIFs; for example, certain listed investment trusts are treated as AIFs.

Providing custody (safeguarding and administration of investments) – Providing custody services in relation to assets that include investments is a regulated activity. Specific permission is required to act as the depositary of an alternative investment fund.

As noted above, for an activity to be a regulated activity, it must be "carried on by way of business." The term "by way of business" is not defined in FSMA or the RAO, but the FCA has issued guidance on "the business test" in its Perimeter Guidance Manual (PERG), based on a number of decisions by UK courts. Ultimately, whether an activity is carried on by way of business is a question of case-by-case analysis which takes into account several factors, including the degree of continuity, the existence of a commercial element, the scale of the activity, and the proportion the activity bears to other activities carried on by the same person but which are not regulated.

**Cryptoasset regulation**

There is currently no bespoke regime for cryptoassets and related activities. Whether a cryptoasset and related activities are regulated depends on whether the characteristics of the cryptoasset mean that it falls within the regulatory perimeter. To assist market participants, the FCA has published guidance on its approach, which sets out three broad categories of cryptoasset in relation to how they fit within existing FCA regulation:

Security tokens, which provide rights and obligations akin to specified investments and fall within the regulatory perimeter

E-money tokens, which fall within the scope of e-money and are subject to the EMRs

Unregulated tokens, which are any other tokens that are not security or e-money tokens, including utility tokens (those used to access a service) and exchange tokens (e.g., cryptocurrencies).

At the time of writing, HM Treasury and the FCA have issued policy and discussion papers on the regulation of cryptoassets in the UK. HM Treasury has confirmed that it will introduce a regulatory regime for both stable tokens used as a means of payment, and for wider types of cryptoassets. The regulated category of stable tokens would refer to tokens which stabilize their value by referencing one or more assets, such as fiat currency or a commodity (i.e., stablecoins), and therefore could be reliably used for retail or wholesale transactions.

The UK government intends to take a phased approach to the regulation of cryptoassets and activities connected with cryptoassets. The regulation of fiat-backed stablecoin activities will take place in Phase 1. Activities relating to wider types of cryptoassets (including, for example, algorithmic stablecoins, and commodity-backed tokens not caught in Phase 1) will be in scope of Phase 2.

The stablecoin regime will apply to fiat-backed stablecoins only. This category will be defined in legislation – HM Treasury intends to capture those stablecoins which seek to maintain a stable value by reference to a fiat currency or basket of currencies, and hold (in whole or in part) that currency or basket as “backing”. This does not include algorithmic, crypto-backed or commodity-backed tokens — these tokens will be captured in Phase 2 (although the UK government does not at this stage intend to differentiate between those tokens and other unbacked cryptoassets in Phase 2).

HM Treasury intends to achieve the regulation of stablecoins through a mixture of amendments to the PSRs and the RAO to bring activities within the regulatory perimeter. The activities of issuance and custody of UK-issued fiat-backed stablecoin will be included in the RAO, enabling the FCA to make rules for firms conducting these activities. Firms wishing to apply for authorization to conduct either of the issuance or custody activities will be subject to FCA rules and guidance as is usual for FCA-regulated activities. The use of fiat-backed stablecoins in payment chains will be regulated through amendments to the payment services regime in the PSRs.

Until the wider regime for regulation of cryptoassets comes into place in Phase 2, the scope of the regime will not cover the activity of facilitating the exchange of cryptoassets (including stablecoins) for other assets — this will fall within the Phase 2 activity of “operating a cryptoasset trading venue”. However, exchange providers will still need to register with the FCA under, and comply with, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) regime. This stablecoin regime will be adapted, rather than replaced, when the wider regime for the regulation of cryptoassets comes into place in Phase 2.

Whilst the regulators indicate in their roadmap that implementation of the stablecoin regime is anticipated to take place in 2025, no details have been provided on any implementation periods that may apply. Further details on the wider cryptoasset regime are expected to follow in due course.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

The UK licensing requirements are only triggered where regulated activities are carried on in the UK. In certain cases, activities may be regarded as being carried on in the UK because a client is located in this jurisdiction, even if the service provider is located outside the UK. Whether activities are to be regarded as being carried on in the UK will in each case be a question of fact as to the degree of connection with the UK and may differ depending on the specific activity.

By way of example, the following activities are regarded as being carried on outside the UK and therefore not subject to UK regulation (although providers of these services will still need to consider UK marketing restrictions):

Accepting deposits is regarded as being carried on where deposit funds are accepted. Where a UK person credits funds to a bank account that they hold outside the UK, the foreign bank where the individual holds his account will not be regarded as accepting deposits in the UK. A UK resident can, therefore, hold an account with an offshore bank without contravening UK laws. Some financial promotion rules will apply to this activity, which impose some limitations on marketing offshore bank accounts to UK customers.

Managing investments is carried on where discretionary investment decisions are taken. Where all members of an investment committee are located outside the UK when making decisions, the activity of managing investments will be regarded as being carried on abroad and not be subject to UK regulation. If on the other hand a person located in the UK participates in the making of discretionary decisions, this is likely to be sufficient to trigger UK licensing obligation even where the majority of the other decision makers are located outside the UK.

Effecting and carrying out contracts of insurance is regarded as being carried on where underwriting decisions are taken.

In other cases, the activities might be deemed to be carried on in the UK and subject to UK laws. For example, advice is regarded as being given where the recipient of the advice is located, so that where a foreign firm is advising a client in the UK, the firm will be regarded as carrying on the activity of advising in the UK. The same analysis applies in relation to the activity of dealing, so that where a counterparty to a transaction is located in the UK, the activity of dealing will be regarded as being carried on in the UK.

Where a firm outside the UK deals with a client or a counterparty located in the UK, those activities will typically be subject to UK laws and regulations. The service provider will need to consider whether they are triggering a local UK licensing obligation and also whether they are complying with UK financial promotion rules. Communications with UK counterparties or clients will most likely constitute financial promotions.

Certain exclusions are available under the UK regulatory regime which enable overseas firms to deal with UK-based clients. This is on the basis that the activities in question will be regarded as being carried on outside the territory of the UK and therefore not subject to UK laws, or because a specific exemption will cover the activities.

The UK has a specific exclusion for overseas firms called the “overseas persons exclusion." This enables persons who do not carry on UK-regulated activities from a permanent place of business in the UK to carry on business with persons in the UK. The exclusion also allows travel to the UK on temporary visits without needing a UK license. This enables a relationship manager to come to the UK to meet with clients or firms to come on roadshows to the UK to promote particular investments. The overseas persons exclusion is only available in limited circumstances, however. In order for this exclusion to apply, the client must either approach the overseas firm (reverse solicitation), or the overseas firm must be able to rely on an exclusion from the UK’s rules on financial promotion. The effect of this is that overseas persons can carry on certain activities with other financial institutions, large corporates, and subject to some limitations, high-net-worth individuals. Other exemptions might apply.

For details on the UK's equivalence regime, see Question 7.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In order to become authorized, an applicant must satisfy the relevant regulator that it meets the Threshold Conditions set out in Schedule 6 of FSMA. The requirements set out in Schedule 6 are supplemented by the Threshold Conditions (COND) part of the FCA Handbook.

The Threshold Conditions can vary depending on the particular regulated activities that the applicant intends to carry on and, in particular, whether the applicant will be PRA- or FCA-authorized. Broadly, however, the following conditions need to be satisfied:

**Location of offices** - For UK-incorporated companies, both the head and registered office must be located in the UK. This can have implications for the composition of the board of directors, so that a majority of the board will need to be resident in the UK and the central administrative functions will also need to be located in the UK.

**Effective Supervision** - Applicants must be capable of being effectively supervised. This emphasizes the need for firms to have a substantive presence in the UK that is accessible to UK regulators and enables the regulator to supervise the firm. The regulator will also consider whether there are any impediments to supervision of the applicant, including the group structure and any relevant laws restricting access to information.

**Appropriate resources** - Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. Resources include financial resources as well as human resources (including management with the required skills) and infrastructure.

**Suitability** - Applicants must be fit and proper to be authorized, having regard to all the circumstances.

**Business model** - The regulator will examine the applicant’s business model. In addition to understanding the economic aspects of the business, matters such as the impact of the model on consumers and the impact on the UK financial system will also be considered.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

An applicant must complete a formal process to obtain authorization, which involves the completion of required application forms and the submission of supporting information.

In most cases, the regulator will have six months from receipt of a completed application in which to determine whether or not to approve the application. The application must be determined within 12 months where it is deemed to have been submitted incomplete.

The particular forms that must be completed for submission to the regulator will depend on the nature of the regulated activities being conducted.

For example, a non-complex Securities and Futures Firm (a type of corporate finance firm) will need to complete the following forms:

**Core details** - This form sets out factual background information relating to the applicant.

**The Supplement** - The Supplement will require the firm to provide details of its Regulatory Business Plan, the regulated activities it will perform, its financial resources, its personnel, its compliance arrangements and its fees/levies.

**Individual Forms** - Certain individuals will be required to be personally registered with the regulator to perform controlled functions. They will need to submit forms providing information about themselves that will enable the regulator to assess their fitness and propriety to perform their roles.

**Owners and Influencers Appendix** - Details about persons / entities who control or exert influence over the firm must be submitted.

**IT systems questionnaire** - Details of the firm’s IT systems must be provided.

**Checklist and declaration form**

**Fees and levies supplement**

**Supporting documents** - Various documents must be submitted with the application or at least available for review, if required. Applicants will need to document compliance arrangements, monitoring programs and have a compliance manual. Financial statements and projections must also be provided with the forms.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

The UKs departure from the EU Single Market has resulted in a loss of passporting rights for UK-based firms. The UK has prioritized regulatory autonomy over alignment in its negotiations with the EU over financial services arrangements and, instead of blanket market access mechanisms to replace passporting, it is seeking regulatory and supervisory cooperation arrangements. This means that the UK is not pursuing bespoke EU market access arrangements but will instead rely on assessments of equivalence. Equivalence is a recognition system which can be used to grant domestic market access to overseas or third-country firms in certain areas of financial services, based on the principle that the countries where those firms are based have regimes which are "equivalent" in outcome.

Equivalence decisions are unilateral decisions that are outside the terms of the UK-EU Trade and Cooperation Agreement (TCA). It is important to note that equivalence regimes do not cover the entirety of the financial services sector. For example, there is no equivalence regime for retail banking. Further, equivalence decisions may be unilaterally withdrawn. Note also that equivalence decisions are not limited to European Economic Area (EEA) jurisdictions — they may apply in respect of any jurisdiction globally that is deemed equivalent.

For incoming EEA firms accessing the UK, the UK has issued a number of decisions granting equivalence. However, for UK-based businesses accessing the EU, at the time of writing, the EU Commission has only granted equivalence on a time-limited basis for UK central securities depositories (CSDs) and for UK central counterparties (CCPs) for financial stability purposes.

The UK has put in place post-Brexit transitional measures for incoming EEA firms which previously conducted business in the UK via passporting rights. These arrangements include temporary permissions and contractual runoff regimes to enable a smooth transition to the new regulatory framework. While some individual member states have put in place limited additional measures, the EU has not established any Union-wide arrangements similar to the UK's Brexit transitional regimes. Further, in many EEA jurisdictions it is no longer possible for UK firms to service EEA retail customers from the UK.

In the absence of equivalence decisions, strategies for UK firms wishing to access European markets include:

Reviewing whether cross-border access is necessary to service EEA-based clients ̶EU law applies what is known as the “characteristic performance” test in determining whether a firm is regarded as doing business in another jurisdiction. The “characteristic performance” comprises the services that the firm is supplying to clients and for which it is being remunerated. Depending on the facts, firms might take the view that the “characteristic performance” takes place in the UK even where clients are located in an EEA country. This is on the basis that the firm is not carrying on any relevant activities in other jurisdictions. If so, no cross-border access would be needed.

Considering suitability of light touch regimes̶ Certain EEA countries have a light touch regime for third-country firms which permits them to access their markets without having a passport under a Single Market Directive (particularly in the case of wholesale/institutional business). Firms can investigate the options available to them to provide services under such light touch regimes, which can involve no more than a straightforward registration or notification procedure.

Use of reverse solicitation rules (particularly for existing customers and contacts) where permitted in individual member states̶ A firm that does not actively market its services in EEA jurisdictions might fall outside local regulations. Where a client or counterparty on its own initiative approaches the firm for the provision of services or to enter into a transaction, engaging in that business may be permissible under the relevant member state's reverse solicitation rules.

Use of National Private Placement Regimes for marketing AIFs in individual EEA member states

Using a group company located in an EEA jurisdiction to introduce business to the UK firm

Setting up delegation and/or outsourcing arrangements between an EEA-licensed firm and a UK group company to carry on performing some activities in the UK — there are, however, significant limitations to such arrangements which cannot in any event amount to little more than "letter-box entities." The European Supervisory Authorities have published guidelines on supervisory principles in this regard.

# 8. Authors and contact information

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