Global Financial Services Regulatory Guide - United Kingdom

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

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

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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.

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