Global Financial Services Regulatory Guide - United Kingdom

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

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# 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.

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