



FCA Authorisation

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This note serves as an introduction to the UK authorisation regime and is not exhaustive. We are happy to advise further on any of the issues highlighted above.





FCA Authorisation **What is the basic process?**

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You need to meet the Threshold Conditions, which are the Financial Conduct Authority's (FCA) minimum standards for becoming, and remaining, authorised; see below.

The process of applying for authorisation requires the proper completion and submission of certain prescribed forms:

An applicant for Part 4A Permission, except in so far as the FCA may direct in individual cases, must apply in writing in the manner directed, and with the information required, in the application pack provided by the FCA

A MiFID investment adviser or investment manager will generally be a "wholesale investment firm" and should follow the FCA application pack process for that category.

The forms required will include some or all of the following:

A core details form - this requires factual information about the business structure, controllers, management and personnel. Information on systems and controls, including business continuity is also required here.

Supplement for investment managers - this covers the applicant's regulatory business plan, its proposed customer types and investment strategy, and the scope of regulatory permissions required. This form also requires information on financial resources and cash flow projections, further detail on personnel and compliance arrangements.

1. Forms for individuals who will be performing "controlled functions" (called Approved Persons; see below) but changing to the Senior Managers & Certification Regime from December 9th 2019.
2. Owners and influencers appendix
3. Forms for controllers - persons who (broadly) hold or control 10 per cent or more of the applicant
4. IT Controls form - for those firms who are more dependent on IT systems, and
5. Supporting documents including org charts/ financial information / compliance procedures, etc.

For applicants which are limited liability partnerships (see legal entities, below) the FCA will need to see a signed LLP agreement before granting authorisation.





Most applicants use a compliance consultant or their legal adviser to manage the application process for them as this will make the process smoother for a first time applicant.

The Threshold Conditions require ongoing compliance. Other applicable FCA rules differ depending on the nature of the business being undertaken and the following is a high level summary of some of the key requirements:

Threshold conditions

There are a number of requirements for successful authorisation. These are known as threshold conditions, which must be met at the point of authorisation and maintained going forward. The conditions are:

- **Business model**

Firms applying for authorisation must submit a detailed Regulatory Business Plan (RBP), which describes the proposed business strategy, business model and operating model.

The business model must be designed to protect consumers' interests and market integrity, in relation to the regulated activities the firm will perform. It should also outline the firm's governance and risk management processes in relation to the regulated activities performed.

- **Appropriate resource**

This includes financial resources, human resources, IT systems, operational continuity arrangements, and systems and controls governing the conduct of business.

- **Suitability**

The management team needs to be 'fit and proper', and they must ensure that the firm's affairs will be conducted in an appropriate manner.

- **Location of offices**

The registered office, head office and 'mind and management' must be in the UK with significant enough presence to support good governance.

- **Effective supervision**

There cannot be any impediment to effective FCA supervision due to the nature and complexity of the business model /products offered or the business organisation.





General Principles: the principles are a general statement of the fundamental obligations of firms under the UK regulatory system. These underpin all the more detailed rules in the FCA Handbook and the FCA has the power to fine firms for failing to adhere to the General Principles.

Marketing: there are detailed rules applicable in the UK and elsewhere in the EU to marketing offshore unregulated collective investment schemes. Broadly, in the UK, unless certain criteria can be satisfied regarding the expertise and experience of any individual, marketing is broadly limited to those institutional investors who can be classified as "professional clients" or "eligible counterparties" within the FCA's client classification requirements. The majority of managers of offshore unregulated funds will not have permission to conduct investment activities with retail clients. For AIFMs, AIFMD also imposes prescriptive disclosure and reporting requirements in relation to AIF marketing activities.

Dealing and managing: for those firms undertaking dealing or portfolio management activities there are extensive provisions designed to ensure the clients of the firm are treated fairly. There is no relaxation even where the firm's sole customer is an offshore fund established by it. Provisions for example cover:

Systems and controls: the FCA rules require a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. For both MiFID firms and AIFMs, there are detailed provisions underpinning this overall principle

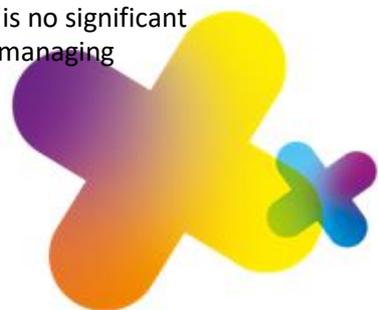
Monitoring and reporting: the FCA rules require a firm to undertake ongoing monitoring of compliance with the FCA rules. They further require a mix of quarterly, six monthly and annual reports on various items. For AIFMs, further information and reporting requirements apply, which will be either on a quarterly or half-yearly basis depending on whether assets under management (as calculated under AIFMD) exceed EUR 1 billion.

The requirements are set out in the FCA Handbook and in AIFMD

Regulatory capital: a firm is required to maintain, on an ongoing basis, the required level of capital (as described above). MiFID firms and AIFMs with "top up" permissions are also required to carry out a risk assessment on an annual basis called an ICAAP (Individual Capital Adequacy Assessment Process) An ICAAP is the process by which a firm's senior management consider their business risks. It requires the documentation of the key risks, details of the management of those risks and consideration of any capital that might need to be set aside to adequately mitigate those risks.

Where a firm identifies additional capital needs through its ICAAP, this additional capital should be held, and becomes the firm's new minimum capital requirement.

Liquidity: MiFID firms and AIFMs with "top up" permissions are also required to maintain liquidity resources which are adequate, both as to amount and quality, to ensure that there is no significant risk that their liabilities cannot be met as they fall due. Its strategy and systems for managing liquidity risk are required to be reviewed annually.





Transaction reporting: firms are required to report to the FCA all transactions in specified financial instruments which are traded on an EU regulated market, whether or not the transaction concerned actually takes place on an EU regulated market, as well as OTC trades in derivatives whose underlying is a debt- or equity-related financial instrument traded on an EU regulated market. The firm can agree that such reports will be made on its behalf by a third party, such as the relevant counterparty. For trades taking place on an EU regulated market, certain markets will undertake to report the transaction on the firm's behalf.

AIFMD-specific requirements: Under the AIFMD regime, there are additional organisational, structuring and conduct requirements specific to AIFMs. These include, in overview, requirements to ensure that the fund appoints a depositary, certain additional policy requirements (e.g. around portfolio liquidity, portfolio risk management, valuation), restrictions on delegation, transparency and restrictions on the use of leverage in the portfolio and new rules on remuneration.

