

# Regulated financial services activities

Updated 4 January 2021

## Status

This guidance is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

## Who is this guidance for?

This guidance is for all law firms that carry on or are considering carrying on financial services activities.

## Purpose of this guidance

By answering various commonly asked questions, to help you consider whether or not you are carrying on financial services activities, who you need to be regulated by and what information you need to give us.

## General

Any law firm that carries out regulated financial services activities must be listed on the relevant Financial Conduct Authority (FCA) register.

If your firm carries out regulated financial services activities under our regulation through an FCA exemption, you need to tell us about what you do so that we can provide accurate information to the FCA.

If you do provide financial services, being on the FCA register is important. Other businesses – such as lenders or credit agencies – might refuse to work with you if they cannot verify that you are regulated or are exempt to carry out such activities.

## Commonly asked questions

[Open all \[#\]](#)

### **[What are regulated financial services activities?](#)**

The regulated financial services activities are set out and explained in [Part 2 of the Financial Services and Markets Act 2000](#) [<http://www.legislation.gov.uk/ukpga/2000/8/contents>].(FSMA)

These include dealing in, arranging, advising on, assisting in the administration of, and making arrangements with a view to:



- carrying out contracts of insurance;
- carrying out consumer credit activities;
- setting up stakeholder pension schemes;
- advising, dealing in or managing, arranging deals, safeguarding and administering investments;
- setting up collective investment schemes;
- arranging, advising on, entering into and administering mortgages;
- providing basic advice on stakeholder products;
- participating in Lloyd's market activities;
- operating a multilateral trading facility;
- sending dematerialised instructions (electronic transfer of title in investments like securities and contractually based investments);
- entering funeral plan contracts;
- issuing e-money;
- agreeing to do most of the above activities.

The FCA provides a complete list of the [regulated financial services activities](https://www.handbook.fca.org.uk/handbook/glossary/G974.html) [https://www.handbook.fca.org.uk/handbook/glossary/G974.html] in its Handbook glossary.

## **How can law firms carry on financial services activities?**

The FSMA allows firms to carry out certain financial activities, if they are:

- Authorised and regulated by a Designated Professional Body (DPB), such as the SRA, under Part 20 of FSMA (known as an exempt professional firm (EPF)).
- Able to rely on a statutory exclusion, meaning that the activity is not a regulated financial activity. For example, certain consumer credit activities, such as debt collecting, will be excluded from regulation under the FSMA where the activities are undertaken by solicitors (or other persons authorised under the Legal Services Act 2007) in the course of providing advocacy services or litigation services.

As a firm you need to determine whether or not you need to be authorised by the FCA or can rely on Part 20 of the FSMA.

## **What is Part 20?**

Part 20 of the FSMA makes a special provision for professional firms that do not carry out mainstream financial services activities but which carry on regulated financial services activities (known as exempt regulated activities) in the course of other work, such as conveyancing, matrimonial, personal injury and trust work.

## **Can I be authorised by the FCA and rely on Part 20 of the FSMA at the same time?**

No. Firms cannot be authorised by both the FCA and a DPB at the same time. You are either authorised or exempt. Depending on how you carry on financial services activities will determine which camp you fall in.

## **How does Part 20 apply?**

Part 20 has two key provisions relevant to SRA-authorised firms:

- FSMA - regulated activities may be carried out by a member of the profession who is not authorised by the FCA where the regulated activity "...arises out of, or is complementary to, the provision of a particular professional service to a particular client..." (s332(4) of FSMA)
- the regulated activity "...must be incidental to the provision by them of professional services..." (s327(4) of FSMA).

So, for example, you might have:

- arranged for after the event insurance for a personal injury or conveyancing client
- provided debt counselling in respect of joint credit card debts in a matrimonial matter
- advised a client on how they should invest monies when advising on a will or probate matter.

As the financial services activities arise out of or are complementary to the service you provide to your client, and are incidental to the firm's legal/professional activities, you will be able to rely on Part 20 and, therefore, fall into the category of an EPF.

## **How is Part 20 engaged?**

For firms to be able to rely on Part 20, we must have rules that govern the carrying out of regulated financial services activities by EPFs. These are:

- the [SRA Financial Services \(Scope\) Rules \(Scope Rules\)](https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules) [<https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules>]
- the [SRA Financial Services \(Conduct of Business\) Rules \(COB Rules\)](https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules) [<https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules>].

The Scope Rules set out the scope of the financial services activities which may be undertaken by EPFs.

## **What do the rules do?**

The rules specifically:

- prohibit firms that are not authorised and regulated by the FCA from carrying on certain regulated activities;
- set out the basic conditions firms must satisfy when carrying out any regulated activities;
- set out other restrictions on regulated activities carried on by those firms.

If you undertake a regulated activity that falls outside the scope of our regime, and you are not authorised by the FCA, you may be committing a criminal offence. It is therefore imperative that you understand the activities which may be undertaken when relying on our rules and those which may not.

The COB Rules regulate the way in which firms carry out such exempt regulated activities - there are some key requirements that firms have to comply with if they carry on insurance distribution activities or consumer credit activities.

The Scope and COB Rules should be considered in parallel with obligations set out in the Principles and the [Code of Conduct for solicitors, RELs and RFLs](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors] and the [Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms].

## **[Are there any tools to help me assess if my firm can rely on Part 20?](#)**

Yes. You can go through our [decision tree](https://upgrade.sra.org.uk/solicitors/resources/accounts-finance/regulated-financial-services-activites/#Collection_3) [https://upgrade.sra.org.uk/solicitors/resources/accounts-finance/regulated-financial-services-activites/#Collection\_3] to help you assess whether or not you can rely on Part 20.

## **[What else do I need to do?](#)**

If, on your assessment, you are satisfied that you can rely on Part 20 (as an EPF) and comply with the Scope and COB Rules, then you should notify us and confirm the financial activities that your firm carries on.

If you arrange or advise on an insurance product for your client, your firm will need to have appointed an insurance distribution officer (IDO) and told us who that person is. The IDO does not need to be approved by us as a role holder and, in most firms, the person will be the firm's Compliance Officer for Legal Practice (COLP).

## **[Why do I need to let you, the SRA, know?](#)**

The FCA maintains a published register, which includes details about firms it authorises and EPFs.

The SRA and other DPBs provide information to the FCA on a weekly basis, which is then used to update the [register \[https://register.fca.org.uk/\]](https://register.fca.org.uk/).

In addition, as a DPB, we are obliged to keep the FCA informed about the way in which we supervise and regulate EPFs. We must provide the FCA with "...the number of exempt professional firms..." and "...the range and scope of exempt regulated activities carried on by its exempt professional firms...".

### **What is the purpose of this register?**

The register assists the public and businesses to find out whether a firm they are using or plan to use, is authorised, registered by the Prudential Regulation Authority (PRA) and/or FCA, or is exempt.

### **Do corporate partners in a firm have to complete the questionnaire?**

Yes. How corporate partners work and the activities they carry on is varied. So if the corporate partners are authorised bodies in their own right then they should respond to the questionnaire.

### **Can my firm be an appointed representative?**

Principle 3 (act with independence) and paragraphs 5.1 to 5.3 of the Code of Conduct for Solicitors, RELs and RFLs (as well as paragraph 7.1 (b) of the Code of Conduct for Firms) focuses on requirements for ensuring that you act in your client's best interests and that you and your firm's independence is preserved when engaging with third parties or recommending third parties to your client. You should avoid being an appointed representative as that might suggest that you have not acted with independence.

## **Download form**

[Financial Services Notification Form \(Editable PDF 4 pages, 1MB\)](https://upgrade.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/firm-financial-services.pdf)  
[<https://upgrade.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/firm-financial-services.pdf>]

The notification form is an editable PDF document. You need the latest version of the [PDF viewer \[https://get.adobe.com/uk/reader/\]](https://get.adobe.com/uk/reader/) to download this

document. You need to fill it in electronically. You should save the form before you start completing it.

## Help deciding

### **Do you need to be authorised by the Financial Conduct Authority or are you an Exempt Professional Firm?**

If you think your firm might be carrying out regulated financial services activities, you can use our interactive decision tool to help you decide what kind of authorisation you need.

[Download decision tree \(PDF 1 page, 84KB\)](#)

[\[https://upgrade.sra.org.uk/globalassets/documents/solicitors/code/fca-authorisation.pdf\]](https://upgrade.sra.org.uk/globalassets/documents/solicitors/code/fca-authorisation.pdf)

### Help me decide

#### **Are you, or will you be, carrying on a regulated financial activity, or involved with specific investments?**

(see definition of [regulated activities](#)

[\[https://www.handbook.fca.org.uk/handbook/glossary/G974.html\]](https://www.handbook.fca.org.uk/handbook/glossary/G974.html) and [Part 3](#)

[\[http://www.legislation.gov.uk/ukxi/2001/544/part/III/made\]](http://www.legislation.gov.uk/ukxi/2001/544/part/III/made) of the Regulated Activities Order)

 Yes No

#### **Are you carrying on the regulated financial activity by way of a business?**

(see [section 22](#) [\[http://www.legislation.gov.uk/ukpga/2000/8/section/22\]](http://www.legislation.gov.uk/ukpga/2000/8/section/22) of FSMA and PERG5.4)

 Yes No

#### **Is the activity excluded from regulation?**

(see [Part 2](#) [\[http://www.legislation.gov.uk/ukxi/2001/544/part/II/made\]](http://www.legislation.gov.uk/ukxi/2001/544/part/II/made) of the Regulated Activities Order)

 Yes No

#### **Is the regulated financial activity a prohibited activity or do restrictions apply?**

(see SRA Financial Services ([Scope Rules](#)

[\[https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/)))



Yes

No

**Is the regulated financial activity carried out by the firm in a manner which is incidental to the provision of legal services?**

Yes

No

**Can you demonstrate that in providing a particular professional service to a particular client, the regulated financial activities arise out of, or are complementary, to that service?**

Yes

No

**You'll be regarded as an exempt professional firm and must comply with the SRA's regulatory arrangements**

([Scope Rules \[https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/) and [COB Rules \[https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/)). If you carry on insurance distribution activities, you will also need to appoint an insurance distribution officer.

**FCA authorisation not required**

**FCA authorisation required**

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## Examples

Listed below under relevant areas of legal practice are a range of examples of SRA-regulated financial services activities that your firm might carry on. If your firm does carry on any of these activities, you need to let us know when you complete the online form (FA8). Your firm will then be registered as an EPF under Part 20 of the Financial Services and Markets Act 2000. The list is not comprehensive.

### Practice area

#### **Arbitration and alternative dispute resolution (ADR)**

Financial services activity



### **Administering a specified benchmark**

Example

You are involved in a long standing commercial dispute between two companies and act for one who is concerned about how certain investments were managed. In order to progress matters and help reach a settlement you agree that you will collect, analyse and process information provided for the purpose of determining a specified benchmark for example, Sterling Overnight Index Average (SONIA); Repurchase Overnight Index Average (RONIA); WM/Reuters.

**Practice area**

**Criminal**

Financial services activity

### **Debt counselling**

Example

You act for a client that has outstanding debts and they ask for advice on how their debts could be consolidated before they are sentenced.

**Practice area**

**Employment**

Financial services activity

### **Credit broking**

Example

After discussing fee arrangements with your client, you refer the client to a lender who provides the client with funds to pay your firm's fees and then repays the lender by instalments.

**Practice area**

**Family/matrimonial litigation**

Financial services activity

### **Advising on investments**

Example

You are acting for a client in divorce proceedings and you advise on the transfer of shares in a company (private or public).

**Practice area**

**Immigration**

Financial services activity

### **Arranging (bringing about) regulated mortgage contracts**

Example



Your client has recently been granted indefinite leave to remain in the UK and seeks assistance in establishing himself and securing a place to stay. You approach a mortgage broker on behalf of your client with a view to making arrangements for your client to enter into a regulated mortgage contract as borrower.

### **Practice area**

#### **Litigation**

Financial services activity

#### **Advising on peer to peer (P2P) agreements**

Example

You have been instructed by a client that does not qualify for legal aid and other fee arrangements are not suitable. You advise the client that other sources of funding should be considered. The client advises that he wishes to set up an online crowd-funding platform and asks you to advise on the terms and conditions.

### **Practice area**

#### **Personal injury**

Financial services activity

#### **Carrying on insurance distribution activities**

Example

Your client has been involved in an accident at work and when funding arrangements are discussed it is noted that funds might not be available to cover third party costs in the event that the claim is unsuccessful. You discuss options with your client and arrange for an after-the-event (ATE) insurance policy to be put into place.

Requirement for role holder

Firm will need to ensure that they have appointed an insurance distribution officer before they carry on the activity.

### **Practice area**

#### **Planning**

Financial services activity

#### **Entering into a regulated credit agreement as lender (where the loan to the client is for fees and disbursements due to the firm)**

Example

You are involved in seeking planning permission for your client so that properties can be built on what is currently classed as a conservation area. You have agreed with your client that your firm's fees will be paid in stages including the payment of disbursements. You bill your client

however, they advise that they cannot pay. You agree to make a loan to your client so that fees can be paid for and enter into a regulated credit agreement.

### **Practice area**

#### **Property (conveyancing)**

Financial services activity

#### **Carrying on insurance distribution activities**

Example

You are instructed on the sale of a property and during the course of the retainer you advise your client there may be issues that could impact on effective transfer of title to the buyer. You agree with the client that you will arrange for a defective title/restrictive covenant indemnity insurance policy to ensure that your client can sell with good title. Sometimes a purchaser will require an indemnity insurance policy as it a condition of their mortgage.

Requirement for role holder

Firm will need to ensure that they have appointed an insurance distribution officer before they carry on the activity.

### **Practice area**

#### **Wills, trusts and tax planning**

Financial services activity

#### **Making arrangements with a view to a home reversion plan**

Example

You act as a trustee and on behalf of the beneficiaries you have been asked to administer a home reversion plan. This is a type of equity-release scheme that lets the seller (the beneficiaries) use some of the money that's tied up in their home. These plans are used for example, to pay for long-term care where the seller is looking to stay in the home.

### **Further help**

For more guidance on regulated financial services activities, contact our [Professional Ethics helpline](https://upgrade.sra.org.uk/home/contact-us/) [https://upgrade.sra.org.uk/home/contact-us/].

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Please use **[www.sra.org.uk/financial](http://www.sra.org.uk/financial)** to link to this page.