



# Practical advice on opening a Financial Services business in the UK

## Authorisations and Regulatory Transactions

21<sup>st</sup> April 2022

# Agenda

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- 3 Main risk areas
- 4 Regulatory Transactions
- 5 FCA Decision-making
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# Introduction

# FCA Authorisations

- For most financial services, prior ‘permission’ is required from the FCA
- Criminal offence to carry out a regulated activity if you are not ‘authorised’ to do so
  - Authorisation
  - Registration
  - Exemption/Exclusion

# Not just new firm authorisations

- Authorisations Division = 'Regulatory Transactions'
  - New firm authorisations
  - Agency permissions
  - Variations of Permission
  - Cancellations
  - Individual approvals (SMFs, PSD/EMD Individuals)
  - Appointed Representatives / Agents
  - Changes in Control
- 'Authorisations' have been happening since 1988
- Regulations (and the Regulators) have evolved since then



# **FCA Authorisation**

## **Where it all begins...**

# Firm types

- Credit institutions (PRA)
- Investment firms
- Fund managers
- Payments firms
- E-money issuers
- Consumer credit firms
- Insurers (PRA) and intermediaries
- Mortgage firms
- Claims management companies

# The FCA's statutory deadlines

For new firm authorisations and VoPs

- **FSMA:**
  - determination within 6 months of receipt of a 'completed' application (or within 6 months of it becoming complete)
  - or within 12 months of an 'incomplete application
- **Payments:**
  - determination within 3 months of receipt of a 'complete' application (or within 3 months of it becoming complete)
  - or within 12 months of an 'incomplete' application
- So, a maximum of 12 months? Perhaps..



# Complete vs Incomplete

- ‘Complete’ – not defined by the regulator, by a combination of:
  - Quantitative – have you provided everything being requested?
  - Qualitative – have you provided sufficient detail?
- ‘Complete’ vs ‘completed’ vs ‘incomplete’
- Expected to be ‘ready, willing and organised’ at point of application

# Threshold Conditions (Sch 6 FSMA)

- Location of Offices – head office, ‘mind and management’
- Effective Supervision (by the FCA)
- Appropriate Resources – financial, non-financial
- Suitability - fit and proper
- Business Model
  - Sound and prudent
  - Interests of consumers
  - Integrity of the UK financial system

# 'Ready, willing and organised'

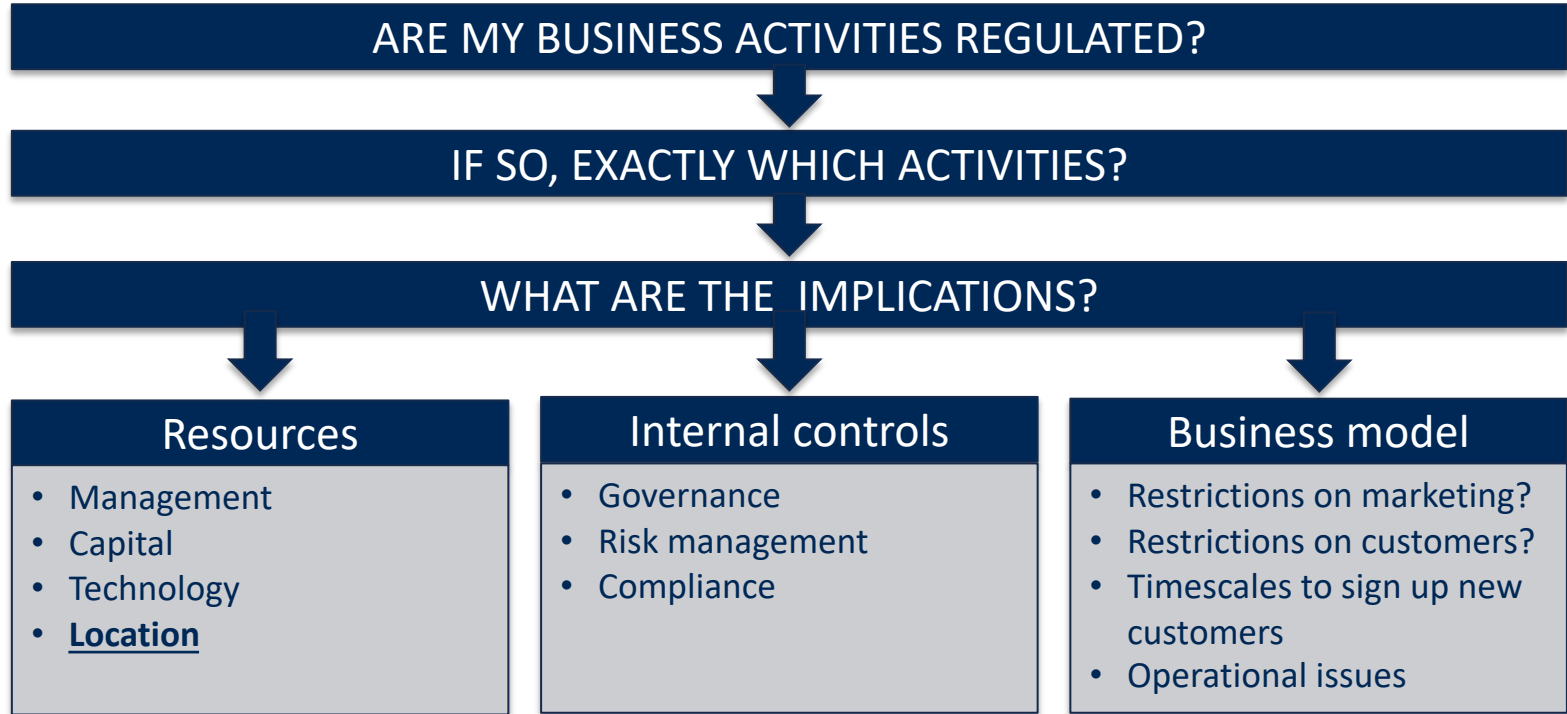
- **Ready** - Authorisations will consider what the applicant has done when preparing to submit their application
- **Willing** - Authorisations will consider the attitude of the applicant during the authorisations process. Authorisations are aware that whilst an applicant may be willing to correct mistakes or gaps in their application, they must also have satisfied the readiness question. Authorisations do not believe it is sufficient for an applicant to submit a poor application but show they are willing, with help from Authorisations, to address any deficiencies
- **Organised** - You should ensure that you have all the supporting documentation prepared and have the necessary arrangements in place to comply with regulations from the day you are authorised

# Allocation process

- Submission of application; then what (and when)?
- Case officer allocation
  - Capacity vs capability
  - Supply vs demand
- Challenges across Regulatory Transactions
- Ready, willing and organised?
- Subject to change (↑ or ↓)

# Key questions

Prior to developing your application pack, you MUST know the answer to these questions



# Main risk areas

# Varies by application type

## Likely to include:

- Regulatory Business Plan
- Financial Forecasts
- Company application forms
- Individual (management) application forms, CVs
- Controller application forms
- Compliance Monitoring Programme
- Descriptions of primary business processes – sales, operational, transactional
- Descriptions of relevant internal and compliance controls
- Client terms of business
- Description of any unregulated business

## And for some firms:

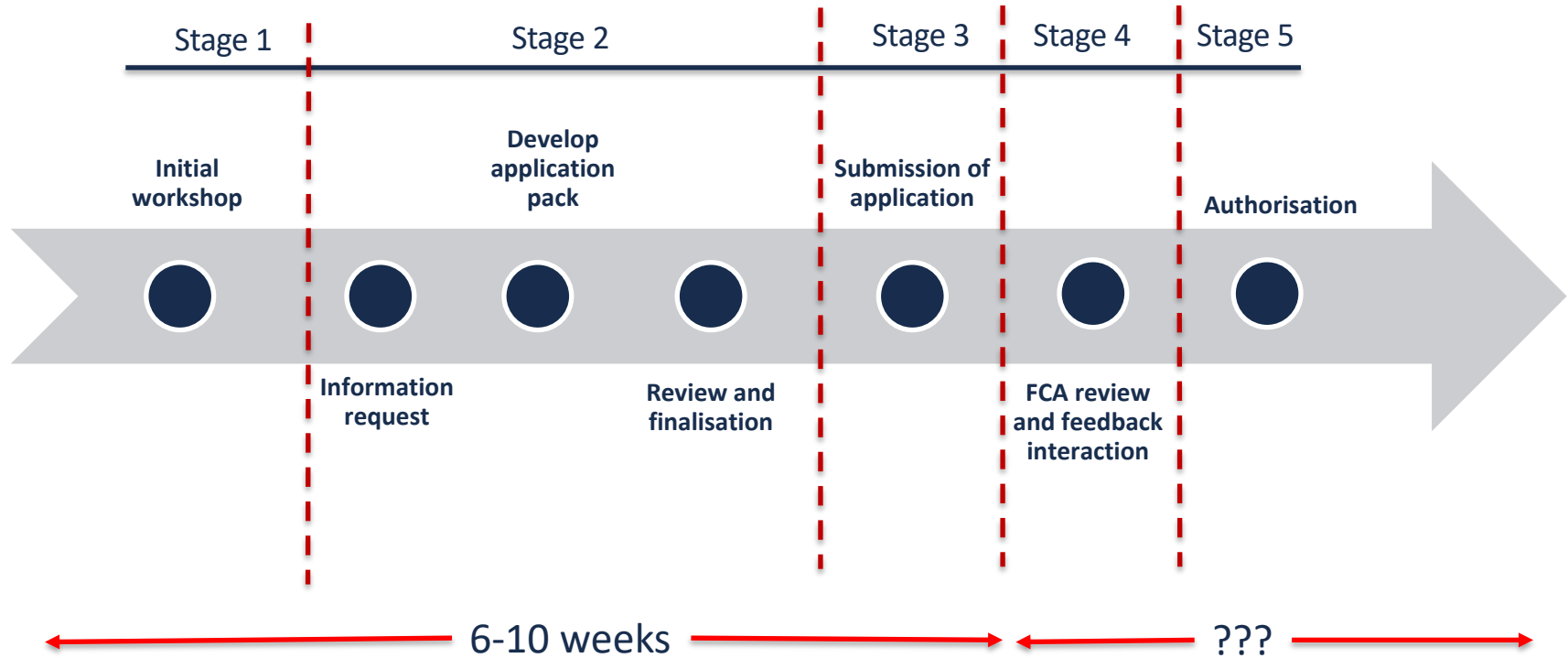
- Sample marketing materials
- Investment strategy
- Risk Management Framework
- Governance Framework
- ICARA, stress-tests, wind down plan



- Payments and e-money vs FSMA
- Scale, risk and complexity of the business



# How long will it take?





# Being ready for authorisation

- Is the firm 'ready, willing and organised'?
- Does it meet the 'minimum standards'?
- This means the business must be ready to go in all aspects prior to authorisation, as described in the application pack:
  - Staff recruited
  - Systems implemented
  - Governance structure and internal controls implemented
  - Capital introduced
  - Bank accounts opened
  - Potential risks identified and mitigated

**Where does it go wrong?**

# Where does it go wrong?

- Lack of 'knowledge and experience'
- Non-disclosure
- Insufficient resources (financial and non-financial)
- Changes in FCA risk appetite
- Business model misunderstood by the FCA
- Regulation not built into the business model
- Insufficient explanation of unregulated business
- Using consultants/not using consultants!

# Regulatory Transactions

# Variations of Permission

- As per new firm authorisations
  - Assessment process
  - Statutory deadlines
- Don't assume an easier ride
- Focus on the new regulated activities and impact on the 'whole'
- Intelligence (track record with Supervision)

# Changes in Control

- Perceived as the ‘back-door’ route to permission
- Again, don’t assume an easier ride
- Focus on all new controllers
- Prudential but also impact on the ‘whole’
  - Change in business model
  - Change in senior management
  - Details of funding of acquisition
- Again, issues with ‘completeness’ and timings
  - 60 working days from receipt of ‘completed’ application
  - 30 day clock-stop (after day 50)

# Individual applications

- Senior Manager Functions
- PSD/EMD Individuals
- Competence and capability
  - CV
  - Interview
- Non-disclosure
  - Disclose, disclose, disclose
- Intelligence

# Decision-making

The background consists of several overlapping, curved shapes in various shades of teal and green. The colors range from a light, almost white-blue to a deep forest green. The shapes are layered, creating a sense of depth and movement. The overall aesthetic is clean, modern, and professional.



# Once you are authorised...

- Under FCA supervision
- Wide range of regulatory reports and deadlines
- Must have ongoing internal monitoring of compliance, strict onboarding and client monitoring procedures
- Training, regulatory reporting, transaction reporting etc. etc.
- Financial crime is a huge issue (AML, fraud, market abuse, data theft etc.)
- Proportionate (to the risks in your business model) risk management and governance

# Summary

Payments and Crypto are in the FCA's sights for supervision.

They see risk to consumers in these sectors and are moving supervision up to FSMA levels – SMCR?

Boards and Senior Management are expected to be accountable.

The FCA are becoming more aggressive in supervision and enforcement.

Evidencing governance and control is vital – “taking all reasonable steps” to be compliant.

Don't forget the ICO as well: Data Protection and Management is also regulated