

Applying for FCA authorisation: how to ensure a successful application outcome

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Introduction

The Financial Conduct Authority or the FCA for short is the UK's regulatory body for regulating the conduct of the UK's financial services and regulates some 58,000 firms, ranging from banks to insurers and investment firms.

Created by parliament, its 3 operational objectives are:

- Protect consumers
- Enhance market integrity
- Promote competition

In its approach document, the FCA states that “the aim of our regulation is to serve the public interest by improving the way the UK financial system works and improving how firms conduct their business”.

Firms are required to meet minimum standards to be authorised approved by the FCA. During the application assessment stage, the FCA assesses several areas, including the adequacy of the applicant firm's financial resources. As part of this, firms are required to demonstrate that they will be able to meet their liabilities as they fall due, whilst the controllers of the firm are expected to be solvent.

Conduct standards

Following the 2008 banking financial crisis and the conduct failings, including the LIBOR manipulation, the government set up the Parliament Commission for Banking Standards (PCBS) to look at the banking sector and make recommendations for improvement. Subsequently, the PCBS recommended that firms should take more responsibility of ensuring the fitness and propriety of their employees. Following this, legislation was passed to introduce the Senior Managers and Certification Regime (SM&CR). The main of the

SM&CR was to strengthen market integrity by making key individuals within firms more accountable for their conduct and competence. A key component of the SM&CR was the introduction of 5 conduct rules.

These are:

- Acting with integrity
- Acting with due care, skill, and diligence
- Being open and co-operative with regulators
- Paying due regard to the interests of customers and treating them fairly
- Observing proper standards of market conduct

The Threshold Conditions and how to meet them

The FCA's threshold conditions represent the minimum conditions or standards required for authorisation or registration.

The FCA's threshold conditions are:

Business model: applicant firms must satisfy the FCA that their business model is suitable for the regulated activities that they wish to carry out

Effective supervision: Applicant firms must demonstrate that they are capable of being supervised effectively by the FCA.

Location of offices: Applicant firms are expected to have their head office and registered office (if applicable), in the UK. These must be physical offices and cannot be virtual or shared offices. Note that as the FCA does not have a definition of 'head office', it will use its discretion in deciding whether this condition is met. One key factor is considering the location of the applicant firm's directors and senior management who are responsible for the firm's day-to-day decision making.

Appropriate resources: Firms must have appropriate financial and non-financial resources. This includes appropriate systems and skilled, knowledgeable, and experienced people to deliver its products and services.

Suitability: Firms must be fit and proper.

With regards to approved individuals, for example, they must demonstrate:

- Honesty, integrity, and sound reputation

- Financial soundness
- Competence and capability to carry their roles – this means having suitable and relevant skills, qualifications, knowledgeable and experience to execute their role.

The FCA will use a range of information sources to assess the suitability, including, information provided in the application, market research and intelligence, calls made to the FCA's contact centre and complaints data from external sources.

Assessing individuals

The fit and proper test is the benchmark used by the FCA to assess whether individuals are suitable to perform senior roles within the firm. The FCA will only approve an individual when it is satisfied that the individual is fit and proper. Generally, applicant firms are required to carry out their own checks and due diligence to prior to submitting their application. For senior managers, a criminal record check will be required. Furthermore, senior managers are required to have a formal Statement of Responsibilities mapping out their areas of responsibility.

Being ready, willing, and organised

When applying, applicant firms will be expected to be ready, willing, and organised. Let's look at what this means in practice.

Ready – firms should show that they well-prepared prior to submission. This includes reading information on the FCA's website. Firms will be expected to have read their application including any documents to ensure everything has been adequately reviewed and signed off. Firms should also consider seeking advice from a compliance expert/consulting firm.

Positive indicators:

- Reading publicly available information on the FCA's website
- Seeking compliance consulting advice

Willing – How you correspond and conduct yourself with the FCA will be considered. For example, if the FCA has asked you for information then you should provide this information in a proactive manner. Any deficiencies in your application should be addressed prior to the application submission.

Positive indicators:

- Being open and honest with the FCA
- Being proactive about providing further information to the FCA case officer

Organised – Firms will be expected to have the necessary arrangements and supporting documents in place to comply with regulatory requirements. The test here is that whether an applicant firm is ready to provide its products and services if authorised.

Positive indicators:

- Provide any supporting information or documents in a timely manner
- Is the applicant firm ready to go live and provide its products and services were it to be authorised today?

FCA authorisation application process

Applications are submitted on the FCA's Connect system. Where an application is deemed as being complete, they will usually be assessed within 3-6 months. However, the process takes longer as the FCA will usually have further questions or seek clarification on the information provided in your application pack. Where an application is deemed as being incomplete, it can take up to 12 months.

Application rejections and cancellations

The FCA will now reject application where it becomes apparent early on that it is inadequate i.e. fails to meet the minimum standards or generally has been prepared poorly. The FCA will take a similar approach to individuals. If it is not satisfied on an individual being fit and proper to hold a role, then it will explain why. The individual in question will have an opportunity to provide further information or evidence in writing or at an interview with the FCA's case officer. Please note that only a limited window of opportunity will exist for the individual to demonstrate their suitability or that they are fit and proper. Where you disagree with the FCA case officer's recommendation not to authorise or register the applicant firm, they may challenge the decision by making representation to the Regulatory Decisions Committee (RCD).

Other considerations

Consumer Duty

The consumer duty came into force in 2023 and sets higher standards for consumer protection in financial services. In summary, firms must act to deliver good outcomes for retail customers. Furthermore, firms must act in good faith, avoid foreseeable harm, and support retail customers to pursue their financial objectives.

Firms are required to meet the four key outcomes, namely:

1. Delivering fair price and value to customers. This includes ensuring that the product is reasonable compared to the overall product features, quality, and benefits. Firms are expected to have carried out fair value assessments and demonstrate fair value.
2. Products and services must be well-designed and fit for purpose, ensuring they meet the needs, characteristics, and objectives of their customers in the target market.
3. Consumer understanding – firms must support customers by helping them understand their products and services to help them make informed decisions about products and services.
4. Customer support – firms must provide adequate support to their customers throughout the product life cycle to help them pursue their financial objectives.

Firms are also required to pay due regard to the needs and requirements of vulnerable customers, especially across customer support and understanding.

Another key area is the consideration of organisation culture, and accountability. Customers must be central to the culture of a firm whilst their purpose centrally aligned with the consumer duty.

Some tips to avoid application delays or rejections

1. Make sure you read, understand, and meet the regulatory conditions, including the threshold conditions.
2. Ensure your business plan and product/services fit the definition of regulated services.
3. Ensure your key people i.e. those responsible for the day-to-day management of the firm are suitably skilled, knowledgeable and experienced.
4. Ensure your application policies are tailored to your actual business and sufficiently detailed rather than being templates or high-level documents.
5. Ensure that you are honest and transparent in your dealings with the FCA and your case officer.
6. Ensure that you have appropriate financial and non-financial resources in place. This includes ensuring you have sufficient management and staff.
7. Ensure that you have appropriate internal controls to operate your firm in a safe secure way.

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For further information, call us on **020 7866 2512**, email us at info@buckinghamcapitalconsulting.co.uk, or visit our website at www.buckinghamcapitalconsulting.com.