

Helpsheet: Investment Business and Designated Professional Body Licencing

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Introduction

This helpsheet is intended to help members in practice determine whether their firm are conducting investment business and whether the firm needs a Designated Professional Body Investment Business licence (DPB licence).

The Financial Services and Markets Act 2000 (FSMA) allows firms to conduct investment business, only if they are regulated by either The Financial Conduct Authority (FCA), or a Designated Professional Body (DPB) such as ICAS or are an appointed representative of another FCA firm. Firms cannot be licensed by a DPB and authorised by the FCA.

To undertake a regulated activity without the appropriate authorisation is a criminal offence.

Only certain types of investment business work may be undertaken by firms holding a DPB licence. The “regulated activity” must be complementary to or arise out of other professional services provided to the client, i.e. it cannot be the only service provided to the client. Both the firm and ICAS must be satisfied that the regulated activities can be conducted in a manner which is incidental to other professional activities.

Firms which require to be authorised by the FCA must be authorised for the categories of work that they conduct. Full details of FCA authorisation can be obtained from their [website](#).

Are we involved in investment business?

When firms are asked about investment business the initial response will often be that they don't get involved in investment business. The only involvement is usually to introduce clients to a Permitted Third Party (PTP) such as an Independent Financial Advisor (IFA) or suitably authorised persons for investments (such as shares and debentures; managed funds; pensions; and sophisticated financial instruments or arrangements). Where a firm introduces a client to a PTP by contacting the PTP and this is not regarding a particular type of investment, then this is correct.

However, often the line between what is and what is not a regulated activity can be extremely thin.

For example, the client may be being introduced in relation to a particular type of investment – often pensions and insurance contracts. If someone in the firm simply telephones the PTP on behalf of the client, this is regulated, and the firm will require a licence. If details of the PTP are provided to the client and they are left to contact the PTP themselves, this would avoid falling within the legislation as a regulated activity.

Other types of investments and situations that might typically be encountered by an accountancy practice include:

Regulated mortgage contract

Consider, for example, cashflow projections have been prepared for a client, the funding is being put into place and the client asks that they be accompanied to the bank for some support. At the meeting, the bank, requests a mortgage on the property. Could this be a regulated mortgage contract and would this be recognised if it were? Would it be expected by the client to receive help and comment from their accountant on the bank's request?

A regulated mortgage contract exists when:

- the borrower is an individual or trustee.
- the lender takes a first charge over property in the UK.

- the secured property is at least 40% occupied by the borrower or a member of his immediate family.

What the borrowed money is used for, is not relevant in deciding whether the mortgage is regulated or not. A loan obtained by an individual (sole trader, partner or director) to invest in a business will be regulated if, in all other respects, it meets the above definition.

Sound familiar, or something that is likely to be come across? Would a client expect their accountant to comment or add advice? It is not possible to do so if the firm is not DPB licensed or FCA authorised.

It is worth noting that second charges, unsecured lending and loans to limited companies are not regulated.

The good news is that there are some activities that you can do without a licence or authorisation. Here are some examples:

- prepare a cashflow and discuss general financing options as long as these do not amount to a recommendation to take out a specific regulated mortgage contract.
- discuss with client the implications of the various terms of a mortgage contract.
- provide generic advice e.g. fixed or variable rate, provided not linked to a specific contract (i.e. not about a specific mortgage).
- make the introduction to an independent mortgage adviser.
- complete a mortgage reference request from the lender.

Fee Protection Insurance

One specific type of insurance that many firms may be impacted by is Fee Protection Insurance (FPI) which provides clients with cover against tax investigations. Whether FPI is a regulated activity or not will depend upon the structure of the scheme.

Schemes where the firm is the policy holder, rather than the client, are not regulated. In this case, the policy insures the practice itself rather than the clients directly. The policy may cover all or specific individual clients. Clients are not the insured party, but the firm agrees to provide a service in respect of tax investigations if these arise. This is the case whether or not the firm chooses to make a specific charge for the provision of the service. Clients should be made aware that the firm holds the underlying insurance policy.

Where the client is the insured party and firms either arrange the purchase of the insurance as a result of passing the application and premium to the insurer or recommend a specific contract of insurance would be a regulated activity and a DPB licence or FCA authorisation is required in such circumstances.

It is worth remembering that “self-insurance” by firms is not permitted under the DPB licence, or FSMA, as this is effectively writing an insurance contract which would require FCA authorisation.

Where the client is the insured party, then care must be taken in relation to interactions with the insurance company in relation to any claim as this may amount to the regulated activity of assisting in the administration and performance of a contract of insurance, which can only be carried out by a firm that has a DPB licence or is FCA authorised.

Contracts of general insurance

When people think of regulated contracts of insurance, they often think of long-term insurance contracts (e.g. pensions and life) but all types of insurance are regulated, e.g. key man, medical, property, liability etc. Regulated activities, i.e. activities that cannot be done without the firm being DPB licensed or FCA authorised include:

- giving specific advice on any type of insurance contract.
- assisting putting in place any type of insurance contract.
- contacting an insurer or an independent financial adviser to introduce a client.
- negotiating claims on behalf of a client.
- where the insurance is a long-term contract, such as an endowment, a pension contract or a whole life contract, FCA authorisation will be needed to give advice.

Providing generic advice (i.e. not about a specific insurance contract) or providing information to a client about insurance, including giving the name of an independent insurance broker to contact (but not contacting the broker on behalf of the client) will not be regulated. Nor will explaining the terms of an insurance contract. If, however, the client asks for advice on specific insurance and for the arrangement

of the contract, this is considered to be a regulated activity. Regulated firms can assist their client by contacting the insurer, completing proposal forms etc (but unregulated firms cannot).

Helping clients to determine the amount of an insured loss is not regulated per se, provided there is no involvement in negotiating a settlement for the client. Also, if the insurance company makes contact regarding the financial position of the client, this information may be provided as long as it is factual information alone being provided. These are professional services.

If the insurance company has queries regarding the quantum of the claim, e.g. in a loss of profits claim, the firm may support the client, but direct contact with the insurer, answering queries and discussing the quantum, could result in negotiation and therefore be regulated.

In summary, unauthorised firms cannot give specific advice or arrange the insurance contract but could give generic advice, e.g. to recommend that loss of profits insurance would be beneficial. A DPB licensed firm or a FCA authorised firm can give specific advice and arrange the insurance contract.

Does the firm need to be regulated?

From the above, it is apparent that if a firm is not DPB licensed or FCA authorised then, extreme care must be taken regarding the work carried out for clients. If there is a likelihood that regulated activities may be carried out in future, consideration should be given to the firm becoming DPB licensed/ FCA authorised. Consideration would include the firms current and potential client base and the type of professional services that are likely to be undertaken on their behalf.

It is recommended that an annual check should be undertaken to ensure there remains no need to be regulated.

The [DPB section](#) of the ICAS website provides detailed information and scenarios of work that a licensed firm can perform, work requiring an FCA authorisation and unregulated work which may appear to be investment business in nature but is not regulated. There are some very helpful tables, providing clear examples.

Examples of professional services which may appear to be investment business but are not regulated investment business are given in Schedule 4, List B of the [DPB \(IB\) Handbook](#).

There are a wide range of investments and activities caught by the FSMA 2000. Part 3 of the DBP (IB) Handbook provides detailed information on what are and are not regulated activities.

If consideration is being given to any of the regulated activities, or involving regulated investments and there are any doubts regarding whether these can safely be undertaken as an activity without a licence or being authorised by the FCA, you should contact ICAS for advice.

What would be the benefits of a firm holding a DPB licence?

As highlighted above, there is often a thin dividing line between what is a regulated activity and what is not a regulated activity. Performing a regulated activity without the appropriate licencing or authorisation is a criminal offence and poses further risks to the business such as reputational damage. Claims against the firm for inappropriate advice are unlikely to be covered by PII and would therefore have to be met from the firm's resources.

A significant number of the regulated activities are services or functions that a client might expect the firm to provide. As noted above, in certain circumstances even the simplest action of contacting an IFA as part of referring a client on could be a regulated activity. At its most basic level, holding a DPB licence offers protection against inadvertently straying into regulated activities when not licenced to do so. It may be easier for example to hold a DPB licence than trying to ensure that no-one in the firm ever makes contact directly with an IFA when referring a client on.

A licensed firm can provide a more inclusive service to the client, as there are additional activities that a licensed firm can undertake that an unlicensed firm cannot.

A licensed firm can also fully discuss advice provided to the client by an IFA /authorised person, giving their own views but must not give its own investment recommendations.

Some of the more common activities that a DPB licensed firm can undertake that an unlicensed firm cannot (note: list is not exhaustive), include:

Client services involving shares

- Advise on the purchase of shares that are not and will not, be traded on a public market.
- Give advice on the sale of shares including those which are or may be publicly traded.
- Comment on, agree, or disagree with the specific advice of an authorised firm (e.g. IFA).
- Deal in shares as an agent of the client.
- Arrange for the sale or purchase of shares.
- Receive and retain documents of title (safeguarding) and arrange for collection of dividends for onward payment to the client.

Client services involving insurance

- Contact the broker/insurer on behalf of the client to effect an introduction.
- Comment on, agree or disagree with the specific advice of an authorised firm.
- Complete a proposal form and send the form to the broker/insurer on behalf of the client.
- Pay the initial premium on behalf of the client.
- Claims - notify the insurer; complete the claim form; negotiate settlement.
- Recommend a specific general insurance contract to the client.
- Arrange an insurance contract (cannot give advice re life or pension).
- Arrange but not advise a top up to a personal pension contract.

Client services involving home finance (regulated mortgage contracts, home reversion plans, home purchase plans, sale and rent back agreement)

- Contact a lender to introduce a client for home finance where the firm also handles the client's money.
- Recommend that a client vary the terms of an existing regulated home finance plan.
- Comment on, agree, or disagree with the advice given by a mortgage broker or lender regarding a specific home finance plan.

Client services involving corporate finance activities

- Advise shareholders to buy or sell shares which are not and will not be traded on a public market.
- Advise shareholders whether to take up a rights issue, where the shares are not and will not be traded on a public market.
- Advise shareholders to sell shares.

Professional indemnity insurance

For firms conducting insurance distribution activities, whether under DPB licencing or under FCA authorisation, the minimum limit of indemnity required for those activities must be equivalent to at least €1,300,380 for any single claim and €1,924,560 in aggregate. This may form part of, or be in addition to, the minimum limit of indemnity required generally under the ICAS PII Regulations.

Obtaining a DPB licence

If your firm wants to become DPB licensed you will need to:

- Submit a DPB Application Form
- Submit a DPB Affiliate Application Form for each Affiliate in your firm (see below)
- Pay an annual DPB licence fee (to be advised by ICAS).
- Have appropriate Professional Indemnity Insurance in place.

If any principals are not members of ICAS (or certain other Designated Professional Bodies, see the application form), they will have to become Designated Professional Body (DPB) Affiliates. Please fill in and return (with your DPB licence application form), a DPB Affiliate application form for each principal who needs to become a DPB Affiliate.

All applications should be sent to Regulatory Authorisations at regulatoryauthorisations@icas.com

Specimen Documents

[DPB Compliance Review Checklist](#)

[DPB Principals and permitted staff annual questionnaire](#)

Useful links

[DPB section of ICAS website](#)

[Designated Professional Body \(Investment Business\) Handbook](#)

Further information and assistance

If you require any further assistance, you may contact the Regulatory Authorisations team by e-mail regulatoryauthorisations@icas.com

Further assistance and information can also be obtained from the Practice Support team. You can contact them through the Practice Support section of the [ICAS Technical helpdesk](#).

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