The Regulatory Environment

1. Introduction

1.1. Chapter overview

This chapter is an important one as it provides the framework for all of the following chapters. It will give you a picture of the regulatory environment of the UK's financial services industry.

In particular, it explains the legal (or statutory) provisions of the Financial Services and Markets Act 2000 (FSMA 2000, or simply, the Act), as revised by the Financial Services Act 2012 (FSA 2012), and the power it grants to the FCA and PRA to make **rules** that govern the behaviour of both firms and individuals working within the financial services industry.

As well as giving powers to the FCA and PRA, FSMA 2000 made it an offence for a firm not to be authorised when carrying out regulated activity. The chapter also looks at the roles of other regulatory bodies, such as the Bank of England, the Financial Ombudsman, Her Majesty's Treasury and the Financial Services Compensation Scheme.

1.2. Learning outcomes

On completion of this module you will be able to:

Introduction to financial markets

- LO 1.1.1 - Explain the features of the financial markets
- LO 1.1.2 - Explain the role and impact of financial institutions
- LO 1.1.3 - Explain the role of the government in the financial markets

European Union (EU)

- LO 3.1.1 - Explain the legal status of EU directives and regulations within the UK
- LO 3.1.2 - Explain the role and powers of the European Securities and Markets Authority
- LO 3.1.4 - Explain the purpose and scope of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directives
- LO 3.1.5 - Explain the purpose and scope of the European Market Infrastructure Directive

Regulatory environment

- LO 3.2.1 - Describe and distinguish between the roles of the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA), Bank of England, Financial Policy Committee (FPC) and HM Treasury
- LO 3.2.6 - Explain the function of the Information Commissioner's Office (NOTE: the rest of this objective is covered in Chapter 6: Other Regulatory Requirements)
- LO 3.2.2 - Explain the different roles of the FCA and the PRA for dual-regulated firms

The Financial Conduct Authority

- LO 3.3.1 - Explain the role and statutory objectives of the FCA
- LO 3.3.2 - Explain and distinguish among the blocks of the FCA Handbook
- LO 3.5.18 - Explain the FCA's approach to temporary product intervention
- LO 3.6.1 - Explain the risk-based approach to supervision and the enforcement and disciplinary powers of the FCA

The general prohibition

- LO 3.2.3 - Explain the scope of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012)
- LO 3.2.4 - Explain the scope of the Regulated Activities Order 2001 (as amended) in terms of specified activities and specified investments

2. Introduction to Financial Markets

2.1. The City of London

The City: then

It is 6.00am on a winter's morning and a team of sailors draw up alongside Cheapside wharf. They begin the process of unloading their cargo. Out come animal skins and precious stones from the Baltic which they hope to sell in the markets that line the river. A good day's trade will pay for the costs of the venture, although the crew will see little of the profit; the merchants who hired the ship and pay the wages will be the ones receiving a handsome return on their investment. They will need to, as they themselves borrowed the money to take on this enterprise. The crew can, however, hope for a well earned bonus if they complete their job well and in good time.

The City: now

It is 6.00am and a trader arrives at her desk. She switches on her screens and scans the information feeds for news of overnight trading in Tokyo. She will begin dealing at 8.00am but for now must decide upon her strategy; the level of interest rates, the confidence of consumers, market trends and volatility - all will influence her opinion. A successful decision now will reap rewards when the bank makes annual bonus payments.

Hundreds of years and a technological revolution separate the crew from the City trader, but the fundamentals of their jobs have remained the same: using other people's money to finance trade.

The markets of Cheapside have long since gone, but the City of London is still full of financial markets; the London Stock Exchange, ICE Futures (formerly known as the International Petroleum Exchange) and NYSE.liffe - the London International Financial Futures (and Options) Exchange - are just some of the many markets where trading still takes place.

2.2. Features of financial markets

Markets

A market is a place where people seeking to trade with one another are brought together. While we all have experience of markets for food and clothes, financial markets are concerned with the raising and trading of capital.

Some people have money (or **capital**) and want to lend it, and some people need capital and want to borrow it. In the financial markets lenders and borrowers come together and, assuming they can find each other, are ‘matched up’. In today's global financial markets simple loans between borrowers and lenders make up only a small part of the activity. Complex transactions require sophisticated deal-making procedures and the financial markets continue to develop in order to meet this challenge.

Lenders

Individuals

Individuals lend in one of two ways: conscious and unconscious savings.

Conscious saving is, for example, depositing cash in a bank account.

Unconscious saving occurs when individuals employ the services of fund managers, and pay premiums into insurance and pension companies. Fund managers use their expertise to lend/invest this money in order to create a portfolio of financial assets.

Companies

Cash-rich companies will often lend money both in the short-term money markets and in the long-term bond markets.

Borrowers

Individuals

Individuals often need to borrow money. They may use credit cards for short-term finance or perhaps take out bank loans for medium-term purchases, like cars and home improvements. In the long-term, house purchases are funded with mortgages.

Companies

Companies require short-term cash to pay for their supplies and other short-term needs. Longer-term borrowing is used to fund expansion and growth, such as factory buildings or overseas expansion.

Governments

Governments earn money through taxes and spend money on public services. Often, governments spend more than they earn so they need cash to make up for the shortfall. The shortfall in the UK is referred to as the Public Sector Net Cash Requirement (PSNCR).

Foreign exchange

Sometimes lenders may have a particular currency to lend, e.g. sterling, but borrowers require a different currency. The foreign exchange market enables people to change the currency they have for the currency they need.

Retail vs. Wholesale

The retail market is one that involves the private individual or private client. It includes retail banking, pensions, general and life insurance and collective investment schemes.

Wholesale

The wholesale market involves institutional clients, such as pension funds, charities and insurance companies. It involves large trades in more specific investments.

Retail

The retail market is one where the client has the least knowledge and experience, so is heavily regulated, whereas in the wholesale market the participants are considered more knowledgeable, so less protection – and fewer restrictions – are applied.

2.3. The role and impact of financial institutions

Financial institutions

There are many professionals in the financial services industry who provide support to the markets in the form of expertise or capital.

The roles of some of these professionals are detailed below:

- **Investment banks**: undertake a range of security related activities on behalf of their clients. Activities may include the following:
  - Trading as principal: buying and selling shares for their own account
  - Broking: dealing on behalf of clients
  - Market making: quoting prices to other market participants
  - Research: providing analysis on investments and their potential
  - Corporate finance: advice and execution related to the raising of capital by companies
  - Mergers and acquisitions: takeover advice
  - Fund management: investing client funds to maximise returns
- **Retail banks**: provide a high street presence primarily for accepting deposits and giving loans. Many have now extended their service line to include pensions, life assurance and share dealing services.
- **Building societies**: fulfil a similar role to retail banks but adopt a different legal structure. Building societies are established as **mutual** societies. This means they are owned jointly by all of their savers and borrowers and do not pay returns to shareholders. Many former building societies have converted into banks in order to access a greater range of financing sources.
- **Insurance companies**: provide two types of insurance: general and life policies. General insurers provide cover against motor accidents and house fires etc, whereas life companies provide, amongst other things, investment vehicles that pay out on death.
- **Fund managers**: offer wealth management services to a broad range of clients. Generally fund managers construct and manage portfolios of investments on behalf of institutional clients, such as pension funds, charities and insurance companies. However, fund managers may also offer their services to wealthy private clients or manage packaged products and market them to the general public.
- **Pension funds**: managers of pension funds perform functions that overlap with those of other fund managers. The funds themselves consist of assets under the control of legal guardians, known as **trustees**. Pension funds control a large proportion of UK shares.
- **Stockbrokers**: trade in investments on behalf of their clients.
- **Custodians**: offer safekeeping and administration services in relation to investment portfolios.
- **Credit card companies**: provide short-term, informal and flexible finance to the public.
- **Third party administrators**: offer administration services for other institutions, such as pension funds and insurance companies.
- **Industry trade bodies**: professional bodies that represent the interests of their members, such as:
  - The Chartered Financial Analyst Society
  - The Association of Private Client Investment Managers and Stockbrokers
  - Chartered Institute of Bankers

  - Investment Management Association
  - Chartered Institute for Securities and Investment

- **Fund supermarkets**: typically websites providing a convenient way of accessing collective investment schemes. Each 'supermarket' will offer a wide variety of funds by a wide variety of providers in one online place. However, different 'supermarkets' will offer a different range of goods and services and cost will vary greatly from one to another.

Investment distribution channels

Direct investments

An investor wishing to invest in particular products is obviously at liberty to make a direct investment in the product they choose by contacting the product provider or the product provider's agent.

Take an individual who wishes to invest in a pension, for example. They could contact a pension provider directly and set up their pension. The investor is using their own knowledge and experience of the market to inform their choice, which may or may not be a good thing. This is an example of execution only business.

Financial advisors

More likely, however, the individual would contact a financial advisor to give advice on the products available and assist the investor in the associated administration.

Independent financial advisors (IFAs)

Some advisors are independent financial advisors and are permitted to give advice on any product on the market.

In our example the IFA would be permitted to give advice to the investor on a pension provided by any pension fund. The investor is now benefiting from the experience of someone who has knowledge of the investments available, so possibly has a better insight into the best choices available.

Appointed representative

Other advisors are tied to a particular provider, or group of providers. In this case, the advisor – referred to as a tied agent or appointed representative – would only be able to give advice on the pensions provided by the provider they are tied to.

In our example, the investor seeking a pension would still benefit from the knowledge and experience of the advisor, but the scope of their advice would be limited to who the advisor represents.

2.4. The role of the government

Introduction

Governments have more recently taken a back seat when it comes to involvement in the financial services industry in most developed, and even developing, nations. Their involvement is typically from the point of view of consumer protection and education, and the combating of financial crime. Historically, governments have been much more active in controlling interest rates and trading in the money markets. However, there is an equally important holistic role of creating economic stability and promoting growth through their economic and industrial policies, as well as their impact through taxation and social welfare.

Economic and industrial policy

Economic and industrial policies are large scale policies that affect the economy and those within it as a whole. They have the ultimate goal of establishing low unemployment and low interest rates to create a constant and sustainable growth. More recently, however, they have been focused on recovery.

Economic policy

Economic policy in the UK is set and implemented jointly by the Government itself and the Bank of England. The ultimate goal is stability within the economy.

The UK Government targets inflation primarily as part of its economic policy. It has set a benchmark of 2.0% and all other policies are set to maintain this. The Government's fiscal policy, controlling Government spending and taxation, plays a role in this, as does the Bank of England's monetary policy, controlling the base rate of interest. The balance of payments will also play a role in this policy. All of these will be discussed in more detail in the economics section.

Industrial policy

Industrial policy, also referred to as supply side economics, has played a lesser role. In the UK there has been a very general focus on key themes such as international competitiveness, innovation, competition, and skills. More recently, the importance of technology and its role in industry has been recognised. However, it has been very much a light touch and we have seen industry in the UK slipping in its contribution to the Gross Domestic Product since the 1970s.

Critics of this light touch suggest a more active approach; recommending a move away from central control through legislation and regulation, and towards a more self-reliant and entrepreneurial focus. They also recommend strong government leadership is required in the creation of a long-term strategy to promote industry where there are opportunities, and reward it where there is success.

Regulation

The UK Government, via the Her Majesty's Treasury (HMT), has a direct impact on the financial services industry in the drafting and writing of financial law. The most significant piece of legislation to affect the current financial environment was the Financial Services and Markets Act 2000 (FSMA 2000), as amended by the Financial Services Act 2012 (FSA 2012), which empowered the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA) to be the regulators for the UK financial markets. The FCA and its regulations will be covered in depth later on, but FSA 2012 set the FCA four objectives that it was required to achieve through its role as regulator:

One strategic objective:

- Ensure the relevant markets work well

Three operational objectives

- Consumer protection: Ensuring an appropriate degree of protection for consumers
- Integrity: Protecting and enhancing the integrity of the UK financial system
- Competition: Promoting effective competition in the interests of consumers

It is worth noting that in April 2010 a new Financial Services Act gained Royal assent, and changed the second objective (public awareness) to financial stability.

Taxation

Taxation affects the financial services industry both through any corporate tax system within the country and through the personal taxation on investors. Other influences are taxes, such as stamp duty on the purchase of shares, value added tax (VAT) on the services that the financial institutions provide and windfall taxes in times of large profits. More recently we have seen a bonus tax of 50% on all discretionary payments above £25,000. The UK Government, in controlling the tax system within a country, wields great influence over the industry in this area.

Social welfare

Social welfare sometimes goes under the term social policy. Social policy takes into consideration social services and the welfare state. In general terms, it considers issues involving:

- Policy and administration of social services, including policies for health, housing, income maintenance, education and social work
- Needs and issues affecting the users of services, including poverty, old age, health, disability, and family policy
- The delivery of welfare

In the UK a great deal of this is funded and controlled through the Government or Government initiatives and funded through taxation and national insurance contributions.

3. European Union

3.1. Introduction

The European Union (EU) was established by the Treaty on European Union (Maastricht, 1992), although the project of creating a Union has a long history, and was first mooted at the European summit of 1972.

The Union is both a political project and a form of legal organisation.

The major objectives of the EU are to promote:

- Economic and social progress
- Sustainable development
- An area without internal frontiers
- Economic and monetary union

3.2. The Lamfalussy approach

The Lamfalussy approach is based on the recommendations of the Committee of 'Wise Men', chaired by Baron Alexandre Lamfalussy. It comprises a four-level procedure that speeds up the legislative process. It divides the legislation into high level framework provisions and implementing measures.

3.3. The European Commission

The European Commission is the driving force behind the EU legislation and directives. It is responsible for the implementation, management and control of the common policies adopted by the European Council - the regular meetings of the Heads of State or governments of the European Union Member States.

In performing their role, the Commission's goal is to create harmonisation in legislation among the member states and to prevent member states from taking policy measures which would unduly benefit their own economies at the expense of other EU countries.

The three new European supervisory authorities are:

- The European Securities and Markets Authority (ESMA)
- The European Banking Authority (EBA)
- The European Insurance and Occupational Pensions Authority (EIOPA)

3.4. The European Securities and Markets Authority (ESMA)

The European Securities and Markets Authority (ESMA) took over the responsibilities of the Committee of European Securities Regulators (CESR) in 2011. It is made up of the regulators of the securities markets from throughout the EU. The regulators on the committee are referred to as competent authorities. The FCA is a competent authority.

ESMA contributes to the safeguarding of the stability of the financial markets while ensuring the integrity, transparency, efficiency and orderly functioning of securities markets in Europe, as well as enhancing investor protection. In general, ESMA will work at a high level setting standards, while day-to-day supervision will continue to be carried out by national supervisory authorities.

The main powers of ESMA are:

- Delegating acts: setting out details needed to comply with the laws, for example setting out information necessary to gain authorisation
- Implementing acts: setting out processes required to implement the laws in the member states, for example standard forms, templates etc.
- Giving technical advice to the European Commission when developing legislative proposals
- Drafting subordinate acts. Subordinate acts take two forms:
- Overseeing a consistent approach to the implementation and enforcement of EU legislation
- Launching investigations into non-compliance, either at the request of the Commission or on its own initiative

3.5. The European Systemic Risk Board (ESRB)

The European Systemic Risk Board (ESRB) will monitor the entire financial sector to identify potential problems.

3.6. Financial Services Action

The Financial Services Action Plan (FSAP) consists of EU directives and regulations.

The FSAP has three specific objectives:

- To create a single EU wholesale market.
- To achieve open and secure retail markets.
- To create state of the art prudential rules and structures of supervision.

3.7. EU Regulation vs. EU Directives

Regulations are the most direct form of EU law - as soon as they are passed, they have binding legal force throughout every Member State, on a par with national laws. They are different from directives, which are addressed to national authorities, who must then take action to make them part of national law.

Directives can be implemented by primary legislation, or by the more recent tendency of delegated legislation under section 2(2) of the European Community Act (1972).

3.8. Markets in Financial Instruments Directive (MiFID)

The most important single policy of harmonisation of the financial regulations has been MiFID. Financial regulators are now required to impose these harmonised rules on their member state firms. The directive states rules that need to be followed by firms from 1 November 2007.

3.9. Undertakings for Collective Investment in Transferable Securities (UCITS)

Background

In 1985 the EEA announced the implementation of a directive regulating collective investment schemes throughout the EEA. This was the UCITS directive. We are currently on the fourth incarnation of the UCITS directive.

UCITS III

UCITS III is split into two parts:

Management Directive increases the scope of management companies' activities that can be passported to include discretionary management, safekeeping and fund administration.

The directive also aims to protect investors by ensuring that management companies are suitably capitalised, and that they have appropriate measures in place for risk management and reporting.

It introduced the simplified prospectus, designed to provide investors with a shortened 'core' version of the current prospectus, but does not replace the actual prospectus.

Product Directive expands the range and type of financial instruments that are permitted within UCITS funds, in particular allowing investment in derivatives for investment as well as for existing risk reduction purposes and investment in other funds.

UCITS IV

UCITS IV came into effect in July 2011. The intention of this amendment is to promote greater efficiency in pan-European management of funds and is likely to cover the following areas:

- Management company passport – a management company located in one country will be able to set up and run a fund in another
- Supervision – a management company will be subject to the supervision and regulation of the country where it is based
- Notification procedure – quicker, more simplified regulator-to-regulator communication
- Key investor information – product brochures to be simpler than the existing 'simplified' prospectus
- Mergers – a standardised framework governing both domestic and cross-border mergers between funds
- Master-feeder structures – allow funds to build economies of scale across borders

UCITS criteria

In order for a scheme to be allowed to operate and promote itself on a pan-European basis it must meet the criteria laid down in UCITS:

- The scheme must apply for permission (a **passport**) from its home state regulator to operate in other EEA member states

- The scheme must be open-ended
- The scheme may not be invested in any instruments or asset classes prohibited by the directive, such as immovables (property), gold or commodities

3.10. The European Market Infrastructure Regulation (EMIR)

This Regulation came into force on 1 April 2013. It requires anybody who has entered into a derivatives contract to report and manage the risk of their derivatives positions.

EMIR imposes three new requirements on those who trade derivatives:

1. To clear OTC derivatives that have been declared subject to the clearing regulation through a central counterparty (CCP)
2. To put in place risk management procedures for those OTC derivatives that are not centrally cleared
3. To report derivatives to a trade repository

All three obligations apply to financial counterparties. The clearing and risk management obligations apply to certain non-financial counterparties while the reporting obligation applies to all of them.

A financial counterparty is any investment firm, credit institution, insurance or reinsurance undertaking, UCITS or UCITS manager, institution for occupational retirement provision or alternative investment fund managed by an alternative investment fund manager.

A non-financial undertaking is any other undertaking established in the EU.

A non-financial counterparty (in relation to a particular class of derivative) is one whose position has exceeded the threshold set for that class of derivatives by the Commission.

4. The regulatory environment

4.1. FSMA 2000

The Financial Services and Markets Act 2000 (FSMA 2000) - drafted by the Treasury - created the framework for regulation in the UK financial services industry. FSMA 2000 is still law, though it has been significantly amended and modified by the Financial Services Act 2012 (FSA 2012).

FSMA 2000 created a single regulator for the entire industry. This single regulator was called the Financial Services Authority (FSA).

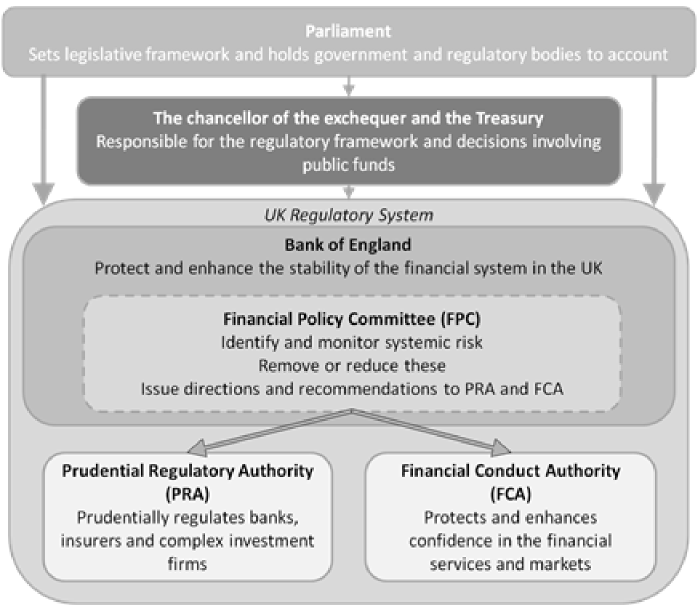
The FSA was roundly criticised in the aftermath of the 2008-9 financial crisis as having taken too much of a ‘micro-prudential’ view of its regulatory responsibilities, i.e. focusing on individual firms at the expense of the health of the overall financial system (the ‘macro-prudential view’).

The FSA 2012 overhauled the UK financial regulatory system by disbanding the FSA and establishing a new system of more specialised and focused regulators:

- A new macro-prudential regulator, the Financial Policy Committee (FPC), established within the Bank of England
- A new prudential regulator, the Prudential Regulation Authority (PRA), established as a subsidiary of the Bank of England
- A new conduct of business regulator, the Financial Conduct Authority (FCA), focusing on wholesale and retail markets and delivering better levels of protection to consumers

This new framework has been mostly welcomed, particularly as it allows a specific emphasis on promoting financial stability and an enhanced focus on macro-prudential as well as micro-prudential regulation.

The new framework is summarised in this diagram:



4.2. The Financial Conduct Authority (FCA)

Under FSA 2012 the FCA took over the bulk of the FSA's responsibilities in April 2013. It is funded and structured in a very similar way to the old FSA – via levies upon regulated firms. The FCA aims to become more of a proactive force than the FSA for enabling the right outcomes for consumers and market participants. It sets and enforces clear expectations for firms and market participants whilst taking a proportionate approach to regulation. In doing so, it adapts to the needs of different consumers and market participants.

4.3. The Prudential Regulation Authority (PRA)

The Prudential Regulation Authority (PRA) has been established for regulation of financial institutions (i.e., banks) that manage significant risks on their balance sheets. The PRA is an operationally independent subsidiary of the Bank of England, complementing the creation of the FPC. The PRA is a focused prudential regulator, with responsibility for the prudential supervision of banks, building societies, insurers, friendly societies, credit unions, Lloyd's of London and its managing agents, and certain significant investment firms – totalling, approx 2,200 firms.

The core objective of the PRA is in ensuring the safety and financial soundness of the firms that it regulates. The PRA seeks to achieve this via a combination of regulations, and a robust application of those regulations including intensive supervision. The PRA takes a risk-based and judgement-based approach to its new role.

The Government has made clear that the ‘light-touch’ regulatory regime of the FCA was insufficient to meet the needs of the financial marketplace. The PRA seeks to challenge the management of firms where appropriate, liaising with both the FCA, and also international regulators in areas beyond the UK’s geographical scope.

4.4. Dual regulated firms

The FCA and PRA have separate authorisation functions, but a single administrative process for dual-regulated firms. Firms that are dual-regulated will apply to the PRA for authorisation. The application will be considered by both the PRA and FCA, following one of two processes:

- Consent: The FCA gives or refuses consent to the PRA. If the FCA does not give consent, the PRA can refuse the application

- Consult: For certain permissions, the PRA must consult the FCA. The PRA must consider the response of the FCA, but need not be bound by it

When considering the application, the FCA concentrates on conduct, the PRA upon prudential supervision. Both regulators have their own threshold conditions. Dual regulated firms have to meet both sets of conditions.

4.5. The Financial Policy Committee (FPC)

The Financial Policy Committee (FPC) has been established within the Bank of England, with responsibility for **macro-prudential** regulation, that is regulation of stability and resilience of the financial system as a whole. The FPC enjoys the authority to give directions, make recommendations and offer advice to institutions responsible for day-to-day oversight and policy (such as the PRA and FCA). It also has the power to intervene to ensure appropriate action is taken where needed to ensure stability.

Membership of the FPC consists of the Governor of the Bank of England (BoE), acting as chair, together with three deputy BoE governors. There are also two BoE executive directors, the chairman of the FCA, four non-Bank members, and a non-voting representative of the Treasury. The role of the FPC is to assist the BoE to achieve its objective in regard to financial stability, and it also takes enhancing economic growth into account in making its decisions.

4.6. The Financial Ombudsman Service (FOS)

The system for the consideration of complaints against its firms by customers involves consideration of the complaint by the firm itself first and, if the customer is not satisfied, independent investigation by the Financial Ombudsman Service (FOS).

Investigation involves both a mediation stage and a possible (depending on the type of client) subsequent determination stage by the Financial Ombudsman.

The FOS can make awards for a range of reasons including financial loss, pain and suffering, damage to reputation and distress or inconvenience.

Complaints against authorised firms relating to a regulated activity fall under the 'Compulsory Jurisdiction' of the FOS.

Unauthorised firms can also submit to the 'Voluntary Jurisdiction' of the FOS by entering into a contract with the FOS as a voluntary participant.

4.7. The Financial Services Compensation Scheme (FSCS)

The Financial Services Compensation Scheme (FSCS) was established to provide compensation where authorised persons and appointed representatives are unable to satisfy claims against them due to insolvency. It is jointly overseen by the FCA and the PRA.

4.8. The Tax and Chancery Chamber of the Upper Tribunal (TCCUT)

The Tax and Chancery Chamber of the Upper Tribunal (TCCUT) is an independent body run by the Ministry of Justice.

The Ministry of Justice is responsible for upholding justice, rights and democracy. Its responsibilities include running the courts, improving the justice system, human rights and information rights law, policy on running elections and modernising the constitution.

If a firm/individual is unhappy with the decisions or judgements made by the FCA or the PRA, it may refer this to the TCCUT. The Tribunal will rehear any enforcement or authorisation cases where the firm/individual and the regulator have not been able to agree the outcome.

This makes the regulator more accountable for its actions and allows for fair treatment of firms and individuals regulated within the financial markets.

A final decision by the Tribunal can be appealed in the Court of Appeal and then the Supreme Court, but only if it relates to a point of law.

4.9. The Bank of England

The Bank of England is responsible for the supervision of banks and money market institutions; this role is carried out by the PRA, which is a subsidiary of the Bank. However, the Bank retains certain key responsibilities for itself:

- Setting interest rates

- Printing bank notes
- Overseeing systemically important financial system infrastructure, such as payment systems
- Maintaining stability in the financial system by acting to deal with fluctuations in liquidity and providing emergency liquidity in times of emergency
- Maintaining a broad overview of the system as a whole
- Acting as 'lender of last resort'
- Appointing the chairman of the Panel on Takeovers and Mergers

In relation to interest rates, decisions are taken by the Bank's Monetary Policy Committee (MPC). The MPC meets on a **monthly basis** and sets rates in order to meet the government's inflation target based on the Consumer Prices Index (CPI).

The inflation target is set each year by the Chancellor of the Exchequer. The Bank implements interest rate decisions by regulating the rate at which it lends to other banks and financial institutions.

4.10. The Information Commissioner's Office

The Data Protection Act

The basic principle of data protection is that the public should know or should be able to find out who is carrying out processing of personal data and for what purposes the processing is being carried out.

To satisfy this principle, the Data Protection Act 1998 (DPA) places obligations on 'data controllers' (anyone who decides how and why personal data - information about identifiable, living individuals - is processed), including requiring them to register with the Information Commissioner.

The Act allows individuals to request access to information being held about them by a firm/organisation. The individual may be charged a maximum of £10 for access to their records (£2 in the case of credit reference agency records). This request is submitted to the firm/ organisation, which must normally respond to it within 40 days.

Where breaches of the DPA occur, the Information Commissioner can:

- Enter premises and seize documentation **without** a court warrant
- Issue enforcement notices requiring data controllers to take remedial action to remedy breaches
- Instigate criminal proceedings

If the Information Commissioner considers that a data controller is in breach of any of the data protection principles, it can serve an enforcement notice. If the data controller fails to comply with the enforcement notice, they are committing an offence and can be fined up to £500,000.

Principles of data protection

Anyone processing personal data must comply with the eight enforceable principles of good practice. They state that data must be:

- **Fairly and lawfully processed.** Data may not, therefore, be processed unless consent has been granted by the subject of the data, or the processing is required in order to comply with legal obligations

- **Processed for limited purposes.** Where data is considered sensitive, for instance, ethnic origin or religion, additional requirements are imposed to handle this data. This principle also ensures that firms cannot use information for other marketing purposes or sell information to third parties

- **Adequate, relevant and not excessive.** This principle ensures that no more data than is strictly necessary is held on a person considering the circumstances

- **Accurate and up to date.** Personal data should be accurate and kept up-to-date

- **Not kept longer than necessary.** It is a requirement that data should be regularly reviewed and deleted when appropriate to do so

- **Processed in accordance with the data subject's rights.** Appropriate technical and organisational measures must be taken to ensure no unlawful processing of personal data

- **Secure.** Personal data must be stored in a safe and secure location

- **Not transferred to countries outside the EEA without adequate protection**

5. The Financial Conduct Authority

5.1. FCA statutory objectives

The FCA's strategic objective is to ensure relevant markets work well.

It achieves this strategic objective through three **operational objectives**:

- Securing an appropriate degree of protection for consumers
- Protecting and enhancing the integrity of the UK financial system; and
- Promoting effective competition in the interests of consumers

As well as its stated objectives, the FCA will:

- Focus on the conduct regulation of all firms, covering the range of their dealings with retail customers, through to their activities in wholesale markets. It will regulate about 33,000 firms in total, including those prudentially supervised by the PRA
- Be responsible for the prudential supervision of all firms not prudentially supervised by the PRA
- Supervise trading infrastructure including the investment exchanges and over-the-counter (OTC) markets and monitor firms' compliance with the market abuse regime
- Have criminal powers to investigate and prosecute insider dealing
- Take on the FCA's responsibilities as the United Kingdom Listing Authority (UKLA)
- Be responsible for overseeing the Financial Ombudsman Service (FOS), the Money Advice Service (MAS) and (jointly with the PRA) the Financial Services Compensation Scheme (FSCS)

General powers

The FCA has been granted a wide range of powers under FSMA 2000. These powers include:

- **Authorisation**: authorising firms to undertake regulated activities, approving individuals to undertake controlled functions and recognising investment exchanges and clearing houses
- **Supervision**: investigating authorised firms and approved individuals
- **Enforcement**: taking enforcement action against authorised firms and approved individuals
- **Sanctions and disciplinary action**: imposing disciplinary measures on authorised firms and approved individuals
- **Rule making**: making general rules to govern authorised firms

5.2. The FCA Handbook: S138 FSMA 2000

S138 FSMA 2000 grants the FCA the power to make general rules governing regulated firms and individuals.

The FCA will only make rules and provisions if they are deemed to be ‘necessary or expedient’ to protect the users of services of authorised firms or of their appointed representatives carrying on regulated activities.

Structure of the FCA Handbook

The FCA rules have been collated into a central source known as the **Handbook**. The Handbook has been divided into seven main **blocks**, each block dealing with different aspects of regulation.

Each block contains a variety of **sourcebooks** (or **manuals**) that provide more detail on particular aspects of compliance. Five of these blocks, and the sourcebooks within, are relevant to your syllabus:

- Block 1: high-level standards. These include the rules on senior management arrangements (**SYSC**), the statement of principles for businesses (**PRIN**), the minimum standards for becoming and remaining authorised (**COND**), training and competence rules (**TC**), the statements of principle and code of practice for approved persons (APER) and the fit and proper criteria for approved persons (**FIT**)
- Block 3: business standards. These include the conduct of business rules (**COBS**), the code of market conduct (**MAR**) (to prevent market abuse), requirements relating to client assets and client money (**CASS**)
- Block 4: regulatory processes. The rules relating to supervision (**SUP**) and decision procedures and penalties (**DEPP**)
- Block 5: redress. Dispute resolution (complaints procedures) (**DISP**) and the compensation scheme (**COMP**)
- Block 6: regulatory guides. The enforcement guide (**EG**)

FCA's temporary product intervention rules

When creating new rules for the Handbook, the FCA needs to go through a lengthy process of discussion and consultation with all stakeholders before issuing a policy statement containing the new rules.

One of the powers given to the FCA by the Financial Services Act 2012 is the power to make temporary product intervention rules (TPIRs) where the delay involved in complying with the requirements for public consultation would prejudice the interests of consumers.

The FCA has stated it will use TPIRs in cases where a product is in “serious danger” of being mis-sold. The TPIRs will allow the FCA to take action, including restricting the use of certain product features and requiring that a product not be promoted to some or all types of customers. In the most serious cases, the regulator will be able to use the rules to prevent a product being sold altogether, such as in instances where complex or niche products are being sold to the mass market. The rules will be made before consultation and will last for no longer than 12 months. During this time the FCA will either consult on a permanent remedy or will work to find another way to resolve the problem.

TPIRs sit alongside other regulatory tools, such as general rules (including non-temporary product intervention rules), guidance, variations of permission and supervisory and enforcement action. The choice of which approach is used in any particular situation will be made based on the facts of the case.

The regulator has published a non-exhaustive list of scenarios under which the TPIRs could be applied:

- Products that would be acceptable but for the inclusion or exclusion of particular features
- Products where there is a significant incentive for inappropriate or indiscriminate targeting of consumers
- Markets where firms restrict their product range or access to their product range in ways designed to increase profitability by restricting consumer choice, reducing competition, or creating barriers to search, switching, or entry

- Products which may bring about significant detriment as a result of being inappropriately targeted
- In particularly serious cases, a product may be considered inherently flawed – for example, a product that has such disadvantageous features that the majority of consumers, or specified types of consumer, are unlikely to benefit

Outcomes-focused approach

An outcomes-focused approach means placing greater reliance on principles and high level rules as a means to achieve the regulatory aims, and less reliance on detailed prescriptive rules. The FCA's aim is to focus more clearly on the outcomes regulators want to achieve, leaving more of the judgement calls on how to achieve those outcomes to the senior management of the firms.

This does not mean the FCA is a purely principles-based regulator. In certain areas it continues to rely on detailed rules and prescriptive processes in order to ensure adequate consumer protection or to adequately implement EU legislation.

Rationale behind outcomes-focused regulation

Past experience in regulation suggests that prescriptive standards have been unable to prevent misconduct. The ever-expanding rule books, designed to prevent misdemeanour, have not stopped further mis-selling, market misconduct or any other detrimental activity.

An outcomes-focused approach is seen as better as it will:

- Allow for regulation that focuses on outcomes rather than prescription, which is more likely to support development and innovation
- Allow for accessibility, particularly for smaller firms, that do not generally have access to deep compliance or legal expertise, where the amount of detailed rules can be bewildering
- Finally, a large volume of detailed, prescriptive and highly complex rules can divert attention towards adhering to the letter rather than the purpose of regulatory standards

For these reasons, the FCA believes that further enhancing its risk-based and evidence-based approach to regulation with an increased emphasis on principles and outcomes is the way to progress its regulatory regime.

Treating customers fairly

The FCA’s Treating Customers Fairly (TCF) initiative is intended to reinforce Principle 6 (Customers’ interests). It is a core part of the FCA’s move to a more principles-based approach to regulation. The TCF initiative aims to introduce a step-change in the behaviour of the financial services sector and to deliver six improved outcomes for consumers.

These outcomes are summarised below:

- Outcome 1: Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture
- Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly
- Outcome 3: Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale
- Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances

- Outcome 5: Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect
- Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint

5.3. The FCA risk-based approach to supervision

The FCA takes a risk-based approach to its supervisory role, targeting its resources in such a way as to give most supervisory effort to those activities that pose the greatest risk to the successful fulfillment of its statutory objectives.

Firm Systematic Framework

The name of the supervisory tool used by the FCA is the 'Firm Systematic Framework' (FSF). FSF will use a common framework across all sectors, which is targeted to the type of firm. The common features involve:

- *Governance and culture* - assess the effectiveness of a firm's process for identifying, managing and reducing conduct risks
- *Product design* - determine the processes a firm has in relation to determining whether products meet customer's needs
- *Sales or transaction processes* - assess firm's systems and controls
- *Post-sales/services and transaction handling* - how effective are firm's processes to ensure customers are treated fairly after the point of dale service or transaction, and including complaints handling
- Business Model and Strategy analysis - to give a view on how sustainable the business would be in respect of conduct, and where the future risk might lie (linking with the Business Model Threshold condition check carried out at authorisation)
- Assessment of how the firm embeds fair treatment of customers and ensures market integrity. The assessment has four modules:
- Deciding what actions are required by the firm - addressing issues highlighted by the FCA
- Communication to the firm - setting out the assessment and actions required

Categorisation of Firms by the FCA

The FCA will categorise all firms for the purposes of conduct supervision and will categorise FCA-regulated firms for prudential supervision.

The conduct supervision categories are C1, C2, C3, C4.

C1 and C2 firms are judged to pose the greatest risks to consumers or market integrity, while C3 and C4 firms are considered to have a lower impact on the FCA's objectives. In general, the list of firms in each category are as follows:

- C1 includes banks and insurance groups with a very large number of retail customers and universal or investment banks with very large client assets and trading operations
- C2 includes firms across all sectors with a substantial number of retail customers or significant wholesale firms
- C3 includes firms across all sectors with retail customers or a significant wholesale presence

- C4 includes smaller firms, including almost all intermediaries

5.4. Enforcement and disciplinary powers of the FCA

Introduction

The FCA is obliged to ensure that participants in the marketplace comply with the law and relevant regulations.

Compliance by firms with regulatory requirements is the responsibility of management. The Supervision Sourcebook produced by the FCA highlights the FCA's approach to this responsibility.

Information gathering by the FCA

Direct supervision by the FCA is carried out via supervision visits by FCA enforcement officers.

The FCA normally expects to give reasonable notice of a visit. However, a firm must permit representatives of the FCA to have access **with** or **without notice** during normal business hours.

FSMA 2000 has granted the FCA certain statutory powers to assist it in its ability to investigate and gather information. FCA surveillance officers can:

- Demand the production of documents, tapes, files, computer data or any other information required by the FCA (copies of which may be removed)
- Demand that **any** employees make themselves available for interview

The FCA can demand that meetings take place at the FCA or the firm's premises.

Cooperation by firms and individuals

The FCA expects senior management to take steps to remedy any shortfall by the firm (or individuals working for it) in relation to the regulatory requirements.

Where consumers suffer loss as a result, the FCA seeks to ensure redress is provided.

The FCA has the **legal power** to require an authorised firm, RIE or RCH to produce information and/or documentation. It is also a criminal offence not to cooperate with the FCA during an investigation or to provide false or misleading information.

During the course of an investigation there is no automatic requirement that the firm (or individual) stops trading.

5.5. Disciplinary process and measures

Regulatory Decisions Committee (RDC)

Although the FCA does have executive powers to make decisions regarding the disciplinary process, it will usually refer more significant matters to the Regulatory Decisions Committee (RDC).

The RDC is accountable to the board of the FCA, but is operationally independent of the FCA. RDC members represent the public interest and are drawn from financial services practitioners and non-practitioners. The only FCA employee is the Chair of the RDC.

The RDC will inform the person under investigation of its progress through the issuance of **statutory notices** and other notices. These notices are:

- **Warning notice**: this provides details of the disciplinary actions or formal procedures the regulator proposes to take
- **Decision notice**: this provides details of the disciplinary actions or formal procedures the regulator has decided to take after representations. The action may differ from that set out in the warning notice
- **Further decision notice**: this is an amendment to a decision notice and can only be issued with the recipient's consent
- **Final notice**: this sets out the terms of final action that the regulator has decided to take once formal procedures have been completed. It states the date from which this action takes effect.
- **Supervisory notice**: this is preventative and protective rather than disciplinary. The notice will normally have immediate effect.
- **Notice of discontinuance**: this is issued where the investigation is being discontinued. This can be issued at any stage in the investigation
- **Private warning**: this is issued when, despite having concerns regarding the behaviour of a firm or individual, the FCA may decide that it is not appropriate to bring formal disciplinary action

The disciplinary process

Typical events surrounding a disciplinary process are as follows:

- Investigation and preliminary findings: The enforcement officers investigate a firm or individual through their information gathering powers. They formulate their preliminary findings and send these to the RDC
- RDC primary assessment: Based on these findings the RDC can issue a warning notice, supervisory notice, notice of discontinuance or private warning to the firm or individual.
- Representation to the RDC: The firm has the right to make a representation to the RDC, either orally or in writing. The regulators must give the firm or individual at least 28 days to make this representation.
- RDC secondary assessment: The RDC can issue a decision notice, a supervisory notice or a notice of discontinuance to the firm or individual.
- Formal appeal to the Upper Tribunal: If a firm or individual has been issued a supervisory notice or (further) decision notice, they can appeal against theses to the Upper Tribunal (Tax and Chancery Chamber). The firm or individual must be given at least 28 days to launch this appeal.
- Final decision: Any action to be taken by the regulators against the firm or individual is finalised at this stage. The final notice will be published on the regulator's website, unless publication would be prejudicial to the interests of consumers.

Decision on disciplinary measures

When the FCA identifies a breach by a firm or individual during an investigation, it has the power to take disciplinary action. Under Section 66 of FSMA 2000, the FCA must commence disciplinary action within three years of first being aware of misconduct.

In deciding whether or not to take disciplinary action the FCA will consider the following factors:

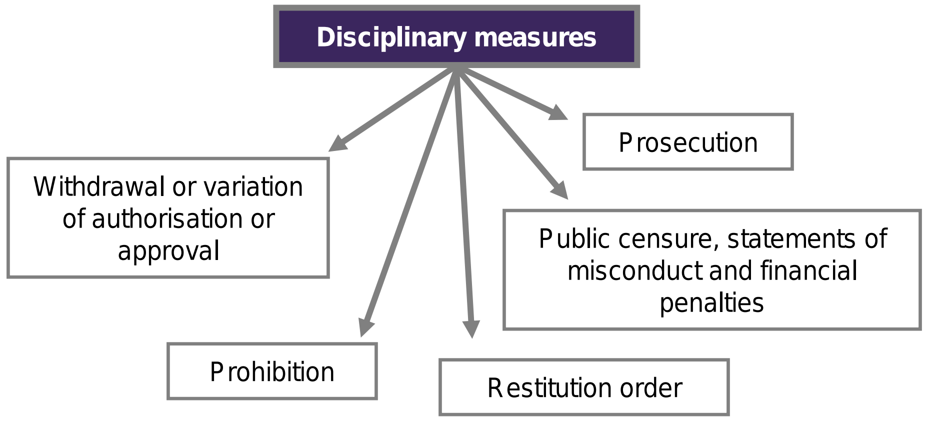
- The nature and seriousness of the breach
- The conduct of the firm or approved person after the breach

- The previous regulatory record of the firm
- The degree of cooperation during the investigation process

Disciplinary measures

The regulator may choose to perform any of the following disciplinary measures:

- Vary or withdraw authorised status
- Withdraw approved person status
- Issue a prohibition order (S56 FSMA 2000)
- Public censure indicating a firm's contravention of FSMA 2000
- Statements of misconducts issued to individuals
- Financial penalties imposed on individuals and firms
- Restitution orders to restore clients to a position they held before any regulatory breach
- Prosecution, if the act is deemed criminal by the regulator, for example insider dealing or money laundering



6. The Regulated Activities Order

6.1. The General Prohibition

Introduction

As previously mentioned, FSMA 2000 provides the statutory framework for regulation of investment and other sorts of financial business in the UK.

Of particular importance is the legal requirement that firms must be properly authorised before being permitted to carry out regulated activities.

This requirement is spelt out in the **general prohibition**, found in S19 FSMA 2000.

The General prohibition (S19 FSMA 2000)

The general prohibition states that "no person may carry on a regulated activity in the UK unless he is an authorised person or an exempt person".

The consequence of the general prohibition is to control entry into the financial services industry with the aim of protecting investors.

Note: in general, it is **firms** (not individuals) that obtain authorisation under FSMA 2000.

Key issues

General prohibition: key issues

- The definition of **regulated activities**: the Act defines these as carrying out **specified activities** in relation to **specified investments**
- The procedures by which a firm becomes **authorised**
- The categories of **exempt** persons

Note that the procedures a firm has to take to become authorised, and the categories of exempt persons, are considered in the next chapter which deals with the regulation of market participants. Here, the focus is on the first key issue: to define what is meant by 'specified investments' and 'specified activities'.

The Regulated Activities Order

Specified activities and specified investments are defined in the Regulated Activities Order 2001.

The Regulated Activities Order is secondary legislation, approved by Parliament, once the primary legislation of FSMA 2000 has been completed.

For example, the requirement to be authorised comes from S19 FSMA 2000 (primary legislation). The detailed definitions of what constitutes a regulated activity is provided by the Regulated Activities Order 2001 (secondary legislation).

The Regulated Activities Order effectively acts as an appendix to the main Act.

6.2. Specified activities

Specified activities are defined in the Regulated Activities Order 2001.

Authorisation (or exemption) under FSMA 2000 is required before firms can carry out these activities.

The **specified activities** are as follows:

- Dealing in investments: buying, selling, subscribing for or underwriting investments, either as agent or principal
- Arranging deals in investments: matching buyers and sellers
- Managing investments: exercising discretion over investment decisions
- Advising on investments: only where the advice relates to securities, contractually based investments and mortgages (i.e. not deposits)
- Operating a Multi-lateral Trading Facility (MTF): a system which brings together multiple buyers and sellers of financial instruments in a way that results in a contract. Formerly known as an Alternative Trading System (ATS)
- Safeguarding and administering investments: safeguarding covers acting as a custodian of investments on behalf of another. Administering relates to services provided to the owner or manager of investments (e.g. settlement)
- Establishing, operating or winding up a collective investment scheme or stakeholder pension scheme: includes acting as a trustee of an authorised unit trust (AUT) and acting as a depositary of an investment company with variable capital (ICVC)
- Sending dematerialised instructions: electronic transfers of title to securities (e.g. CREST)
- Effecting or carrying out contracts of insurance (general and life) as principal and assisting in the administration and performance of a contract of insurance
- Lloyd's activities: certain activities in relation to Lloyd's are regulated, such as managing the underwriting capacity of a Lloyd's syndicate
- Providing funeral plan contracts
- Entering into and administering a regulated mortgage contract: this includes mortgage advice, administration and mortgage lending
- Home finance activities
- Accepting deposits
- Issuing electronic money (e-money) which can be used to pay for goods and services instead of cash, e.g. Paypal
- Agreeing to carry out most regulated activities
- Bidding in emissions auctions
- Operating or managing a dormant account fund

6.3. Excluded activities

The following activities are **not** regulated and do not require authorisation under FSMA 2000:

- Investment advice in newspapers: advice that takes the form of regularly updated news or information provided that the provision of investment advice is not the primary purpose of the newspaper or publication. Note that **tip sheets** (issued by financial institutions) are not excluded
- Television broadcasts and similar activities
- Providing information: organisations such as Reuters and Bloomberg do not need to be authorised
- Trustees, nominees and personal representatives: the trustee or representative **must not receive remuneration**

It therefore follows that a trustee of an authorised unit trust would need to be authorised as they are paid for their services.

- Operating an employee share scheme
- Providing insurance as principal is covered but **not** the activities of loss adjusters
- Trading on one's own account: transactions are not regulated if the principal investor is also the end user and no service is offered to others, i.e. a person buying shares for himself/herself does not need to be authorised provided that he/she is not holding himself/herself out to be a dealer in the investments
- Dealing in contracts for foreign exchange
- Overseas person: defined as firms which do not carry out regulated activities from a permanent place of business within the UK. This exception covers two categories. The activity will be excluded provided that the overseas firm conducts its activities in the UK through an authorised or exempt firm or where the activity is the result of an unsolicited approach by a UK individual; for example, if a UK individual asks a US broker to buy US shares, the firm does not need to be authorised under FSMA 2000.

6.4. Specified investments

Specified investments are defined by the Regulated Activities Order as being regulated under FSMA 2000. They are:

- Shares in companies: any corporate or unincorporated body constituted under UK or overseas law
- Certificates representing securities, e.g. depositary receipts
- Warrants: the right to buy a new share in a company
- Debt instruments: both public and private issues
- Units in collective investment schemes: both units in unit trusts and shares in investment companies with variable capital (ICVCs). Note that ICVCs are sometimes referred to as open-ended investment companies (OEICs)
- Options to buy or sell:
  - Other investments
  - Currencies

  - Precious metals - gold, silver, platinum and palladium
  - Options on these options
- Futures contracts for **investment** (or **speculative**) purposes

The definition does **not** apply where contracts are used for **risk management** (i.e. commercial or hedging) purposes.

Note that contracts traded on Recognised Investment Exchanges are presumed to be for investment purposes. Unless the examiner tells you otherwise you should assume that futures are for investment purposes and therefore are specified investments.

- Contracts for differences (e.g. the FTSE 100 future, interest rate swaps (IRSs), forward rate agreements (FRAs) for interest rates, spread bets and rolling spot forex contracts)
- Lloyd's syndicates: individuals and companies whose combined financial backing provides the underwriting capacity for insurance and re-insurance markets
- Rights under contracts of insurance: both general (e.g. home and motor insurance) and life policies are covered. Note that car breakdown insurance is specifically excluded
- Rights in a stakeholder pension: private pensions for employees who are not part of a company pension or for the self-employed
- Rights under a funeral plan: savings schemes to provide funds for a funeral on death
- Rights under a regulated mortgage contract. In a regulated mortgage, the loan is secured by a first legal mortgage or it is on a property which is located in the UK, which will be occupied (at least 40% of the time) by the borrower or their family
- Home finance - this takes two forms: home reversion plans and home purchase plans
  - Home reversion plans are where a homeowner sells all or part of their home to a plan provider in return for a lump sum or a series of cash flows. However, the homeowner retains the right to live in the property until death or some other event causes them to vacate the property
  - Home purchase plans are an alternative way to purchase a house without taking out an interest bearing mortgage. These are designed to fit in with Islamic Law
- Deposits: certain banking activities are within the scope of FSMA
- Rights or interests in investments, e.g. repos in relation to specified investments

6.5. Excluded investments

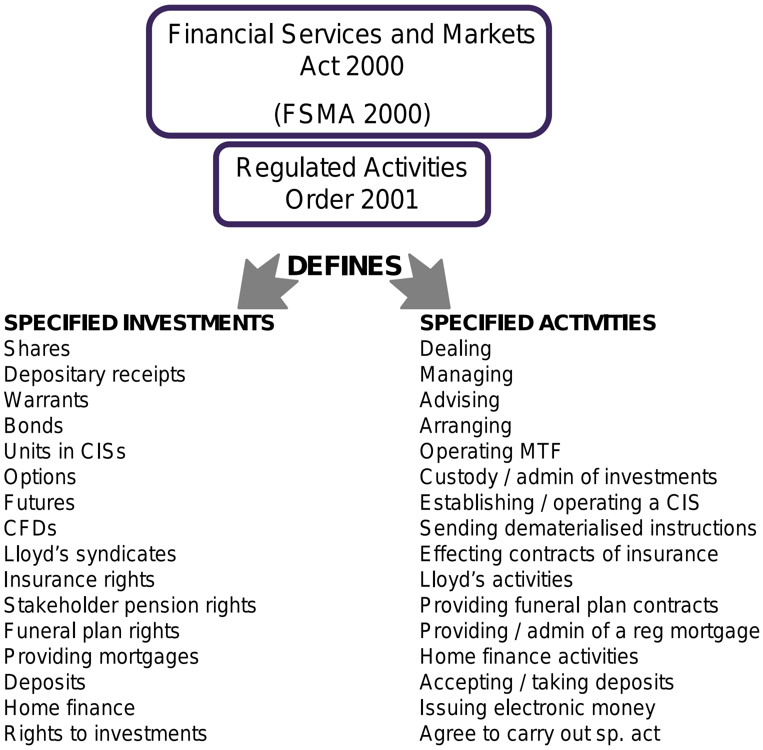
Excluded investments are those items that are **not** defined as specified investments by the Regulated Activities Order 2001. Consequently, firms whose only activity is in relation to these 'investments' do **not** require authorisation under FSMA 2000.

The following are excluded investments:

- Physical property (e.g. land, antiques and commodities)
- Currencies and transactions in currencies (e.g. spot and forward contracts for foreign exchange)
- Premium bonds

- National Savings Certificates (in fact, **all** National Savings Bank products)

6.6. Specified investments and specified activities



6.7. Contravention of the general prohibition

Criminal offences and penalties

S23 FSMA 2000 makes it a criminal offence to carry on a regulated activity without authorisation or exemption.

The FCA has the power to **prosecute** these offences and to institute civil enforcement proceedings. The maximum criminal penalty for breaking the general prohibition is two years in jail and an unlimited fine.

Civil remedies

The FCA may also seek civil intervention and can ask a court for:

- Injunctions against likely or continuing breaches, orders to remedy such breaches and freezing orders against likely disposals of assets
- Restitution orders for profits obtained, or losses suffered by others
- Compulsory administration, bankruptcy or winding-up orders for inability to pay debts or, in the last case, because it would be just and equitable

Voidable contracts

Contracts entered into where there has been a breach of the general prohibition are **voidable** at the option of the investor.

30 Contravention of the general prohibition

The investor has the following choices:

- Enforce the contract: rely on the agreement and sue for damages if any loss is suffered
- Avoid the contract: the investor has the right to his/her money back

7. Summary

7.1. Key concepts

Introduction to financial markets

- LO 1.1.1 - The features of the financial markets
- LO 1.1.2 - The role and impact of financial institutions
- LO 1.1.3 - The role of the government in the financial markets

European Union (EU)

- LO 3.1.1 - The legal status of EU directives and regulations within the UK
- LO 3.1.2 - The role and powers of the European Securities and Markets Authority
- LO 3.1.4 - The purpose and scope of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directives
- LO 3.1.5 - The purpose and scope of the European Market Infrastructure Directive

Regulatory environment

- LO 3.2.1 - The roles of the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA), Bank of England, Financial Policy Committee (FPC) and HM Treasury
- LO 3.2.6 - The function of the Information Commissioner's Office (NOTE: the rest of this objective is covered in Chapter 6: Other Regulatory Requirements)
- LO 3.2.2 - The different roles of the FCA and the PRA for dual-regulated firms

The Financial Conduct Authority

- LO 3.3.1 - The role and statutory objectives of the FCA
- LO 3.3.2 - The blocks of the FCA Handbook
- LO 3.5.18 - The FCA's approach to temporary product intervention
- LO 3.6.1 - The risk-based approach to supervision and the enforcement and disciplinary powers of the FCA

The general prohibition

- LO 3.2.3 - The scope of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012)
- LO 3.2.4 - The scope of the Regulated Activities Order 2001 (as amended) in terms of specified activities and specified investments

Now you have finished this chapter you should attempt the chapter questions.