



payments and crypto network

Preparing an Application for Authorisation

A series of guides addressing common issues in relation to preparing an application for authorisation.

Guide 4: Head Office

What do the FCA mean by 'Head Office' in the UK?

The question should be a simple one to answer, however the context will need to be considered carefully since the Head Office location is more than just a physical office address. A distinction needs to be made between the company's Registered Office location (i.e. the legal address of the business) and the Head Office, which is the location from where key business decisions take place on a daily basis and from where strategic direction is set.

As referenced in FCA guidance, neither the *Electronic Money Regulations 2011* nor the *Payment Service Regulations 2017* define what is actually meant by a firm's 'Head Office'. The FCA also state that they will judge each application for authorisation on a case-by-case basis. A degree of interpretation is therefore afforded to the applicant firm in defining the arrangements that will support the assertion that the Head Office is in the UK. Similarly, the FCA have a degree of interpretation regarding whether they agree with the applicant's arguments for the existence of a UK Head Office.

FCA guidance states that the Head Office is the location of the '*central management and control*' which is interpreted by the FCA as the location of:

- the directors and other senior management * who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and
- the central administrative functions ** of the firm (e.g. central compliance, internal audit).

* The directors and senior management are interpreted to be the EMD Individuals or the PSD Individuals, depending in whether the firm is applying for authorization as an Electronic Money Institution ("EMI") or Payment Institution ("PI").



** Certain business functions should be performed from the Head Office and logically these would be functions that do not make sense to outsource, e.g. regulatory compliance and risk management. That is not to say that outsourced support could not be used to support a central compliance or risk management function. The key issue would be to have second line of defence in the UK, i.e. the activities of the Compliance Manager, MLRO, Risk Manager etc.

What are the implications for an application for authorization?

Maintaining a UK Head Office is a pre-requisite for becoming authorised, and for staying authorised. There should not be any ambiguity in the assertions made in the application regarding the existence of a UK Head Office. The following points should be considered and could be used to develop content for inclusion in an application:

- **Roles** - the roles that will be maintained by the business. The staff organisation structure chart (required to be submitted as part of an application) should detail the roles, business functions and reporting lines for the business. The focus should be on the roles that are relevant to the delivery of the regulated services, i.e. directors and senior management. The application should then make clear which roles will be based at the Head Office, which will need to satisfy the FCA that the 'central management and control' of the business is exercised from the Head Office. Logically, this would involve the functioning of a UK based Board, with directorship roles based in the UK, and supported by certain senior managers. Developing a suitable staff organisation structure is the subject of the ***Applications for Authorisation Guide 3 - Staff organisation structure***.
- **Individuals** - the individuals performing the designated roles and their residential location. Defining the roles is the first step, allocation of individuals the second. It is reasonable that several (sometimes more) roles can be performed by one individual, so the question of whether a UK Head Office is maintained is more to do with the number of individuals allocated to the business to perform the key roles in which the FCA would be interested in (i.e. the roles responsible for the delivery of the regulated services). These individuals should be based in the UK. Staff based overseas, whilst sometimes logical and necessary from an operational perspective, would not be considered to support the existence of a UK Head Office.
- **Business functions** – the business functions that are performed from the Head Office location will need to be set in the context of the roles that are based at that location. A UK-based compliance lead would support the assertion that there is a UK-based compliance function. Similarly, with the role of MLRO (potentially performed by the same individual). The outsourcing of aspects of these functions, particularly in relation to AML / CTF operations is common and should not undermine the function being based in the UK (e.g. the outsourcing of customer due diligence or transaction monitoring activities, which would be undertaken as part of the first line of defence). Second line of defence should reasonably reside at the UK Head Office. Many other business functions tend to be outsourced, e.g. Platform, Customer Services, HR, Finance.
- **Oversight of outsourced functions** - all key business functions outsourced by firms will need to be subject to UK-based oversight from roles that would logically be based at the UK Head Office. Appropriate oversight arrangements are a pre-requisite if outsourcing is to take place. The outsourcing of functions such as Sales and Business



Development, i.e. activities that are not key to the provision of the regulated activities, is not particularly relevant to an application.

- **Size and complexity of the business** - maintain arrangements that are commensurate with the size and complexity of the business. The resources allocated to the Head Office, in particular the number of individuals performing the designated roles (remember that one individual can wear several ‘hats’) should consider the size of the business (e.g. the number of customers, level of turnover, range of services) and the complexity of the business (e.g. the complexity of the services, risks associated with the customer base, the level of outsourcing).

Developing arrangements to address these points should enable your business to meet the Head Office requirement.

