

Annexes for the FCA/PRA MoU

Annex 1: Regulatory processes, enforcement and legal intervention

(i) Applications to grant, vary or cancel a regulatory permission

1 The PRA, as prudential regulator, will lead and manage a single administrative process for providing permissions to dual-regulated firms. This will include co-ordinating the process and communicating all formal notices and decisions to the firm. As provided for in FSMA, the PRA will (i) obtain consent from the FCA before granting or removing a permission for dual-regulated firms or before varying a permission by adding a new regulated activity and (ii) consult the FCA before cancelling a dual-regulated firm's permission.

2 Each regulator will assess the application against the relevant Threshold Conditions in line with its objective(s). In general, the PRA will be responsible for asking for any additional information in support of the application. The FCA may ask for such information in co-ordination with the PRA. Each regulator will provide the other with relevant information, whether submitted as part of the application or any other it holds, where material to the other's responsibilities.

3 The FCA is required to consult the PRA if authorising, varying or cancelling the permission of an FCA regulated firm which is part of a group containing a dual-regulated firm.

(ii) Approved persons

4 For dual-regulated firms, lead responsibility for approving individuals in respect of 'Significant Influence Functions' will be split between the PRA and the FCA depending on which acts as designator of that function. The regulator designating that function will manage a single administrative process, communicating all formal notices and decisions to the firm and/or individual as appropriate. The FCA and the PRA will each consult the other before designating 'Significant Influence Functions'. The FCA and the PRA will also consult each other, as appropriate, in respect of policy for 'Controlled Functions' including 'Significant Influence Functions'.

5 In practice, the PRA will designate publicly in its rulebook those functions deemed to be materially connected to the prudential soundness of a firm. Such functions include the CEO, Chair, Senior Independent Director and the chairs of the audit, risk and remuneration committees. The PRA will lead the approval process for all persons seeking to undertake such functions and will require the consent of the FCA before taking its decision whether to approve the applicant.

6 The FCA will lead on all functions concerned with a firm's interface with customers including client assets, anti-money laundering and compliance. For such roles, the FCA will be solely responsible for the process including communicating all formal notices and decisions to the individual. The FCA will consult the PRA for a sub-set of the Controlled Functions specified by the FCA. This consultation will take place where either regulator judges that the approval, or rejection, of the application may have a material adverse effect on the PRA's advancement of its objectives; for example, if the PRA has views on the applicant based on prior experience, where the individual would be responsible for committing significant capital, or where a role differs substantially from the norm. The FCA will always consult the PRA where the application is for CF29 (Significant Management) where the applicant would be the most senior individual in an EEA or non-EEA branch.

7 If the PRA responds, it may provide a formal view, with supporting evidence, or informal concerns which may prompt the FCA to seek further information from the applicant or other sources. Where the PRA’s view is instrumental to the FCA’s decision to refuse an application, the FCA will notify the PRA prior to taking a decision and will consult on the relevant wording of any notice to be published. The PRA may be called upon to provide evidence its view in any related legal proceedings.

(iii) Passporting

8 Both the PRA and the FCA will have a role in the administration of the passport notification process as explained in the table below. This section complies with FSMA requirements to publish arrangements made to consult each other regarding EEA passport rights. These arrangements come into force on 1 April 2013.

9 The lead regulator will be responsible for managing the single administrative process, providing the other regulator with copies of the form, information and accompanying documents received and administering notices to the Home or Host state regulator and to the firm concerned. The lead regulator will provide the other with copies of the consent notice received, as required, and have regard to any advice or representations received from the other.

	Scenario	Role of PRA	Role of FCA
1	Inward passporting via Banking Consolidation Directive (BCD) and Insurance Directives	Lead regulator	May make representations to PRA. Where the applicant would not undertake any PRA-regulated activities ¹ , the PRA requires the consent of the FCA to give notices. Where a notification under the BCD does not relate to PRA-regulated activities, the FCA will typically undertake the assessment and be the solo UK supervisor of the firm.
2	Inward passporting under all other Directives	May make representations in related to PRA-authorized persons. The FCA requires the consent of the PRA to give certain notices under MiFID, where the applicant firm is, or will be, PRA-authorized, or in the immediate group of a PRA-authorized person, or where the application relates to a PRA-regulated activity.	Lead regulator

¹ This applies to a small number of non-deposit taking branches passporting into the UK under the Banking Consolidation Directive, which may include e-money issuers and those offering payment services.

3	Outward passporting of dual regulated firms	Lead regulator	May make representations to PRA
4	Outward passporting of FCA only firms	May make representations only where an applicant firm's group includes a PRA- authorised person.	Lead regulator

(iv) Change in Control

10 The relevant prudential regulator of the target firm will be responsible for assessing and processing applications to acquire or increase control in a firm. It will consult the other regulator in the case of dual-regulated firms and groups. Respective roles are set out below.

	Scenario	Role of PRA	Role of FCA
1	Target firm is dual-regulated.	Determines whether to approve	FCA may make representations to the PRA on any relevant matter. Under 187A of FSMA, the FCA may require the PRA to object or impose conditions on money laundering/terrorist financing grounds.
2	Target firm regulated by FCA but a member of its group is dual-regulated.	PRA may make representations to the FCA on any matter. Under 187B, PRA may require the FCA to impose conditions in certain circumstances.	Determines whether to approve
3	Proposed controller is dual-regulated and target firm is regulated by the FCA.	PRA may make representations to the FCA on any matter. Under 187B, PRA may require the FCA to impose conditions in certain circumstances.	Determine whether to approve
4	Target firm is regulated only by FCA and is not part of a group containing a dual regulated firm. Proposed controller is not a dual-regulated firm.	No role	Assesses and processes applications

11 The relevant prudential regulator will be responsible for co-ordinating the single administrative process. It will be responsible for communicating formal notices and decisions to the firm, and will consult the other regulator before taking its decision in line with the responsibilities

above. Where consultation is required, each regulator will feed into this process in a timely manner to ensure that the statutory timeframes are met.

12 Where there are multiple change in control applications relating to the same group (e.g. in a group restructuring), the FCA will have regard to any decision of the PRA in relation to a change in control of a dual-regulated firm before deciding whether or not to approve the change in control of any FCA-regulated firms in the group.

13 In general, the relevant prudential regulator will be responsible for asking for any additional information in support of the application. The other regulator may ask for such information in co-ordination with the relevant prudential regulator. Each regulator will provide the other regulator with relevant information, whether submitted as part of the application or any other in its possession, where material to the other's responsibilities.

14 The relevant prudential regulator will be notified when control is decreased. It will pass on such information to the other regulator as appropriate.

(v) Part VII transfers:

15 The PRA will lead the Part VII process in relation to insurance and banking business transfers. While the ultimate decision of whether to approve a business transfer is with the courts, the PRA will be responsible for specific regulatory functions connected with Part VII applications and the provision of relevant regulatory certificates as required by legislation.

16 In the case of insurance business transfers, the PRA will consult the FCA before approving the independent expert to produce a report on the scheme and the form of that report.

17 The PRA will also consult the FCA before approving notices due to be published in the press and sent to policyholders as required by legislation.

18 Each regulator has the right to make written/oral representations to the Court, including providing the Court with reports setting out their views of the proposed transfer scheme.

(vi) Enforcement and legal intervention

19 In this section, a relevant firm is one that is either dual regulated, or a member of a group which includes a PRA-authorized firm.

20 The PRA will consult the FCA before exercising the power to vary a firm's permission to carry out regulated activities on its own initiative by limiting or removing a regulated activity from that permission and the FCA will consult the PRA before exercising this power against a relevant firm. Each regulator will obtain the consent of the other before varying a dual regulated firm's permission where the variation involves adding a regulated activity to the permission or widening the description of a regulated activity.

21 The PRA will consult the FCA before exercising its power to impose requirements on a firm's permission on its own initiative. The FCA will consult the PRA before exercising its power to impose requirements on a firm's permission on its own initiative against a firm that is or, which on the granting of an application for permission will be, a relevant firm.

22 Each regulator will consult the other before withdrawing an approval of an approved person given by the other.

23 When contemplating the appointment of investigators, in relation to a relevant firm the FCA and the PRA will notify each other. The purpose of these notifications is to allow the other regulator to analyse the impact of the proposed action on its objectives.

24 Where the issue affects advancement of the objectives of both the FCA and the PRA, the regulators will determine whether any investigation against a firm or officer/employee should be carried out by the FCA, by the PRA, or jointly, and how any investigation and subsequent proceedings should be co-ordinated. Where either the FCA or the PRA carries out any subsequent investigation and proceedings alone, that regulator will keep the other regulator regularly updated on material aspects of the progress of the investigation (including unannounced visits, the execution of a search warrant or ahead of any arrests).

25 As set out in FSMA, and elaborating on paragraph 43 of the FCA/PRA MoU, each regulator may issue Warning Notices and Decisions Notices. Each regulator will consult the other when they have reached a view in principle regarding the action they plan to take and before a formal decision to issue a Warning Notice or Decision Notice has been taken.

26 The FCA and the PRA will also notify each other in appropriate cases involving proposed civil (including insolvency) or criminal proceedings. This notification will usually take place when a view in principle has been reached and in any event before a formal decision to issue proceedings has been taken.

27 The FCA and the PRA will notify each other before issuing any press release in relation to an enforcement action or legal proceeding involving a relevant firm.

Annex 2: Regulatory Data

- 1 The regulators will routinely share regulatory data available to one, where it is relevant to the responsibilities of the other.

- 2 Data will be shared according to the following principles:
 - the ability of either regulator to obtain data should not be constrained;
 - the approach should be as efficient as possible for both firms and the regulators;
 - the approach must maintain data security;
 - the importance of data integrity and accuracy will be recognised; and
 - the process of data management should be flexible, including in response to potentially rapidly changing requirements.

- 3 Each regulator will be responsible for validation and quality checking, as well as data collection in a timely and efficient way.

- 4 The PRA and FCA will consult each other on changes to regularly collected data/forms.

- 5 The PRA and the FCA will consult each other on:
 - shared data definitions; and
 - deciding on, agreeing and approving the management of data systems to allow for the efficient sharing of data between the regulators.

- 6 They will establish a forum for consultation on issues regarding existing data sets and introducing new data sets.

- 7 A Bank Group/FCA data management committee will meet on a quarterly basis and will be responsible for ensuring that practice and working processes accord with the framework and principles set out above, as well as considering the need for any amendments to these arrangements.