

# Founder Focus: FAQs for Start-Up Success

## The Regulatory Perimeter: Are you a FinTech Engaging in Regulated Activities?

Considering the nature of FinTech businesses, some firms are likely to carry out activities which are “regulated activities” for the purposes of the UK financial regulatory regime. In order to lawfully carry on those activities, FinTechs must be authorised and regulated by the Financial Conduct Authority (FCA) or be exempt from the requirement to be authorised.

In some cases, there is uncertainty over whether a firm needs to be regulated to carry on some or all of its activities or, put another way, whether those activities fall within the “regulatory perimeter”.

### Why is this important?

In general terms, a person is prohibited from carrying on activities which are regulated activities in the UK by way of business unless they are authorised by the FCA or exempt from the requirement to be authorised. This is referred to as the ‘General Prohibition’.

Breaching the General Prohibition is a criminal offence, carrying a maximum sanction of an unlimited fine and/or two years’ imprisonment. Directors / officers of the firm can also be held personally responsible if the breach was committed with their “consent or connivance”, with the same potential sanctions. A breach can also lead to the unenforceability of agreements entered into in the course of or as a result of those activities, whether by the firm itself or by third party regulated firms, and potentially to civil liability to third parties who suffer loss as a result; and to compensation obligations to customers for money or property transferred by them in the course of the unlawful activities.

It is therefore essential for FinTechs to understand how their UK business activities are treated for the purposes of the UK rules, and whether they require FCA authorisation / an exemption to lawfully carry on those activities - in other words, whether or not their activities sit ‘within the perimeter’.

### What are regulated activities?

The activities which are “regulated activities” are prescribed by legislation. Examples include accepting deposits (i.e. acting as a bank), issuing electronic money, arranging or advising on investments, and discretionary management of other people’s investments. Certain types of payment services are not strictly regulated activities, but nonetheless require FCA approval to lawfully carry on.

Whether a particular business line will sit within the regulatory perimeter, and if so whether an exemption is available, will depend on the surrounding facts and circumstances. Obtaining appropriate advice at an early stage is therefore crucial so as to avoid the potential risk exposures summarised above for unintentionally breaching the General Prohibition.

An important development for FinTechs operating in the crypto space is the extension to digital assets of the definition of “investments” under the relevant UK financial services legislation. As a consequence, activities relating to digital assets may now fall within the perimeter, depending on the nature of the assets concerned and the activities carried out by the firm. This development highlights the need for crypto firms to take a proactive approach as regards to their regulatory status and treatment.

### Any questions?

Get in touch with our **Financial Services Regulatory team**



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