

Traffic Light Guide to Investment Business Activity

REISSUED NOVEMBER 2021



Introduction

The purpose of this guide is to help firms identify whether a DPB (Investment Business) licence, or FCA authorisation with the appropriate permission category, is needed to undertake a particular investment activity or whether this can be done without any authorisation under the Financial Services and Markets Act 2000 (the Act).

This is a complex area and this guide is not exhaustive. The activities which are regulated activities are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. You should refer to this if you remain in any doubt as to whether a service is regulated and obtain legal advice where necessary.

The content of this guide is colour-coded to help distinguish between the different types of investment services your firm can offer. This will depend on your firm's regulatory status under the Act.

GREEN: NOT REGULATED.

Can be offered without a DPB (Investment Business) licence or FCA authorisation.

AMBER: ALLOWED WITH A DPB (INVESTMENT BUSINESS) LICENCE.

Can be offered with a DPB (Investment Business) licence.

RED: DIRECT FINANCIAL CONDUCT AUTHORITY (FCA) AUTHORISATION IS REQUIRED.

This work cannot be carried out without FCA authorisation.

THE CONTENT OF THIS GUIDE IS PROVIDED AGAINST THE FOLLOWING CLIENT LIFE CYCLE SETTINGS:

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THIS TRAFFIC LIGHT GUIDE HAS BEEN RE-ISSUED FOR 2021 AND REPLACES PREVIOUS VERSIONS OF THIS GUIDE WHICH ARE NOW OBSOLETE.

Any investment business conducted under a DPB (Investment Business) licence as an exempt regulated activity must be incidental and arise out of, or is complementary to, another professional service. Further guidance is contained in the DPB (Investment Business) Handbook (1 October 2018) which sets out the way in which exempt regulated services should be provided to clients and the regulations which firms are expected to follow as well as further guidance on the allowed activities.

When communicating with clients about investment opportunities a firm could be making a financial promotion under section 21 of the Act which, unless it is exempt under the terms of the Financial Promotions Order, only a firm authorised by the Financial Conduct Authority (FCA) will be able to issue or approve. This is a complex area and firms should seek external advice if there is any doubt as to the requirements, or contact the ICAEW Technical Advisory Team +44 (0)1908 248 250. There are exemptions which have been specifically designed for DPB (Investment Business) licensed firms which allow them to make communications about a regulated activity allowed by the licence.

ETHICAL CONSIDERATIONS

When making introductions to financial advisers, firms must also follow the ICAEW Code of Ethics in relation to independence and objectivity. If an introduction to a restricted adviser (ie, someone who cannot provide independent advice across all markets and all retail investment products) is deemed appropriate, whether by passing the adviser's details to the client or by passing the client's details directly to the adviser for it to contact the client, the reasons for this, and the safeguards employed, should be clearly documented.

There are circumstances when introductions will be regulated and require a DPB (Investment Business) licence which are dealt with in this guide. For further details please also see the Introductions to Financial Advisers helpsheet.

When a firm makes a referral or recommends a financial adviser, it will be under a duty of care to the client to consider the fitness for purpose of the adviser to address the client's needs and carry out due diligence. This includes considering the probity and competence of the financial adviser and checking that their authorisation provides the necessary permissions to carry out the work.

Section 1: Accumulation

Pensions

NOT REGULATED

- Factual discussions at a general level with a client about the tax treatment of pensions and general information on the different types of pension schemes that can be used, but not discussions on the merits or suitability of specific pension products. For example, a discussion on the generic differences between workplace pension schemes as opposed to self-invested personal pension schemes, with general comments about their characteristics while refraining from discussing or identifying any specific pension product.
- Providing the client with the name and contact details of an authorised firm (but not passing the details of a client to the authorised firm).
 No comments can be made on the advice given by the authorised firm.
- Providing auto enrolment services to help client businesses identify and set up an auto enrolment compliant pension scheme for their employees.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Passing a client's details to an authorised firm with the client's consent for the adviser to contact the client.
- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not, but not giving alternative advice.
- Implementing investment planning in cooperation with an authorised firm.
- Arranging to make payments into, or to place property into, a personal pension scheme, including a self-invested pension scheme at the request of a client, but not recommending the acquisition or transfer of any rights into such a scheme.

- Discussions with a client on the relative merits and suitability of a specific pension contract eg, a particular self-invested personal pension offered by company X.
- Recommending that a client purchases a specific personal pension contract.
- Advising a client to invest money or put property into a specific personal pension scheme or the disposal of any rights in a scheme such as transferring value to another scheme.

Portfolio management

NOT REGULATED

- Managing investments* under a power of attorney, providing all routine day-to-day decisions relating to investments* are taken by an authorised firm.
- Managing trust assets as a trustee or personal representative provided the person acting as a trustee does not hold themselves out as being able to manage investments* and is not remunerated for what they do in addition to any remuneration they receive as a trustee or personal representative.

*investments exclude all types of insurance contract such as general, life assurance, pensions and term insurance.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Non-discretionary decisions:
 - concerning investment strategy eg, the mix of different types of securities;
 - to appoint or remove an external fund manager;
 - that do not concern the acquisition of a particular security or contractually based investment (eg, life policies, investment linked long-term health insurance);
- Arrange the purchase of a security provided the decision is taken by an authorised firm.

REGULATED AND REQUIRES FCA AUTHORISATION

Discretionary management of investments.

Securities

Shares: individual investors

NOT REGULATED

- Factual discussion at a general level with clients about the difference between listed and unlisted shares and the various investment products available to facilitate the purchase of these, but not discussions on the merits of a specific investment.
- Passing the client's details onto an independent authorised firm with the client's consent for the adviser to contact the client.
- Advising and arranging a reorganisation of shareholdings among family members, for no valuable consideration.
- Providing a valuation of shares for a client provided no advice is given as to whether to purchase the shares.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not but not giving alternative advice.
- Discussions with clients, for example, high net worth investors, on the relative merits of investing in an Enterprise Investment Scheme/ Seed Enterprise Scheme.
- Discussions with clients, for example, private equity investors, on the relative merits of purchasing private company shares.
- Arranging for the purchase of any shares, provided that in the case of shares which are, or which will be, traded on a public market, no advice has been given.
- Advice to a client leading to arranging the disposal of a client's investment.

- Implementing plans in cooperation with an authorised firm.
- Advising and arranging a reorganisation of shareholdings between married partners or other family members for valuable consideration.
- Advising shareholders in an unlisted company to take up a rights issue.

- Discussing with clients the relative merits of investing in venture capital trusts.
- Advising on the purchase of shares in a listed company which does not qualify for the exclusion in Article 70 of the Regulated Activities
- Advising shareholders to take up a rights issue where the shares are/will be traded on a public market
- Advising prospective shareholders in separate companies into which a company is demerging where the shares are/will be traded on a public market.

Shares: incorporated clients (eg, family businesses)

NOT REGULATED

- Passing the client's details onto an independent authorised firm with the client's consent for the adviser to contact the client.
- Advising on, and arranging, the formation of a company.
- Advice and assistance to a company to issue shares (including a rights issue), provided this does not result in bringing the company and potential investors together.
- Advising on obtaining an unsecured overdraft or loan.
- Advice to a company on a share buy-back.
- Advice to a company on a take-over bid for another company.
- Advice to a company which wants to go public.
- Advice to a company on restructuring involving setting up a group and the creation of new companies, or advice involving demerging a company into a number of separate companies.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Advice to a company on the purchase of shares of less than a controlling stake and arranging the transaction.
- Advising a company on making a trade investment of less than a controlling stake in another unlisted company.
- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not but not giving alternative advice.
- Making arrangements for a company to issue shares, which brings about the transaction or make arrangements in which investors participate, for example an introduction to a business angel.
- Implementing plans in cooperation with authorised firms.

REGULATED AND REQUIRES FCA AUTHORISATION

 Advising an unlisted company on making a trade investment of less than a controlling stake in another listed company.

Stocks and shares ISAs, corporate bonds, gilts, unit and investment trusts and open-ended investment companies

NOT REGULATED

- Factual discussions at a general level with a client about the different types of investments, such as explaining the characteristics of unit trusts and ISAs but not discussions on the merits of a specific investment.
- Passing client's details to an independent authorised firm with the client's consent for the firm to contact the client.
- The giving of advice by a trustee to a fellow trustee or beneficiary provided no remuneration is received over and above that for services as a trustee or beneficiary.
- Arranging deals in investments as a trustee or personal representative with a fellow trustee or beneficiary provided no remuneration is received over and above that for services as a trustee or beneficiary.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not, but not providing alternative advice.
- On the instruction of a client, arrange with an authorised firm the buying or subscribing for, or underwriting, of these types of investment.
- Implementing an investment plan in cooperation with an authorised firm.

- Discussions with clients on the relative merits and suitability of a specific investment offered by company X.
- Recommending that a client purchase a specific investment.

Home finance (mortgages, home reversion plans and home purchase plans)

NOT REGULATED

- Discussing with, and recommending to, a client about the need for a home finance plan or loan.
- Discussing with, and recommending to, a client about the type of mortgage to obtain.
- Discussing with, and recommending to, a client about which particular lender (which provides a range of home finance plans) to go to.
- Introducing a client to a mortgage broker for home finance business who provides independent advice.
- Introducing a client to a lender for home finance business provided no clients' money is handled and/or a recommendation given in relation to a specific home finance plan.
- Advising a client to surrender a regulated home finance plan.
- Recommending to a client a non-residential/ buy-to-let mortgage on a residential or commercial property.
- An individual acting as a trustee or personal representative is not carrying on a regulated activity where the borrower is a beneficiary under the trust or will in question, for example, advancing money to a beneficiary, provided no remuneration is received over and above that for services as a trustee or beneficiary.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Discussing with, and recommending, a lender which provides only one type of regulated home finance plan.
- Introducing a client to a lender for home finance business where clients' money is handled in relation to a specific home finance plan.
- Commenting on, agreeing or disagreeing with the advice given in respect of a specific regulated home finance plan by a mortgage broker or lender, but not recommending a specific alternative regulated mortgage contract.
- Recommending a client to vary the terms of an existing regulated home finance plan.

- Recommending a client takes out a specific regulated home finance plan.
- Acting as an intermediary between the client and the lender to advise on, and put in place, a regulated home finance plan.
- Recommending a client takes out an equity release scheme.
- Recommending a client, for example, an accidental landlord, takes out a consumer buy-to-let mortgage.

Bank deposit accounts (including National Savings and investment products)

Ordinary bank deposit accounts and cash ISAs are not regulated products and therefore no registration is required under the Financial Services & Markets Act 2000 to advise on these.

Section 2: De-Accumulation

Pensions

NOT REGULATED

- Discussions with a client on the different ways to access their pension or passing this information on to someone else as part of inheritance tax planning.
- Providing the client with the name and contact details of an authorised firm (but not passing the details of the client to the authorised firm). No comments can be made on the advice given by the authorised firm.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Passing client's details to an authorised firm with the client's consent for the adviser to contact the client.
- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not, but not giving alternative advice.
- Implementing investment planning in cooperation with an authorised firm.
- On the advice of an authorised firm to a client, dispose of some, or all, of the rights under a personal pension scheme.

REGULATED AND REQUIRES FCA AUTHORISATION

 Discussions with, or making a recommendation to, a client about the disposal of any rights or interests in a personal pension scheme.

Portfolio management

The same as for accumulation except that a DPB (Investment Business) licensed firm can make decisions to sell or not sell securities or contractually based investments.

Securities

Shares: individual investors

NOT REGULATED

 Passing a client's details to an independent authorised firm with the client's consent for the firm to contact the client. No comments can be made on the advice given by the authorised firm

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Advising on the disposal of any shares in companies which do not qualify for the exclusion in Article 70 of the Regulated Activities Order. For example, arranging for the transfer of shares for valuable consideration between married partners or to other family members.
- Explaining and evaluating advice given by an authorised firm, identifying whether this is suitable and, if appropriate, providing alternative advice, except where the shares are held in a personal pension scheme.
- Arranging for the sale of any shares.
- On the instruction of a client, arrange with an authorised firm to sell shares.
- Implementing an investment plan in cooperation with an authorised firm.

REGULATED AND REQUIRES FCA AUTHORISATION

• There are no additional investment activities which specifically require FCA authorisation.

Shares: incorporated clients (eg, family businesses)

NOT REGULATED

- Passing the client's details onto an independent authorised firm with the client's consent for the adviser to contact the client.
- Providing a valuation of shares for a client provided no advice is given as to whether to sell the shares.
- Advising and arranging the sale of a company (listed or unlisted), provided this meets the exclusion in Article 70 of the Regulated Activities Order.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Advising on, or arranging, the sale of shares to a venture capitalist in order to raise capital.
- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not, but not giving alternative advice.
- On the instruction of a client, arrange with an authorised firm to sell shares.
- Arranging an equity for debt exchange for a company with financial problems to increase stability.
- Implementing plans in cooperation with the authorised firm.

REGULATED AND REQUIRES FCA AUTHORISATION

 There are no additional investment activities which specifically require FCA authorisation.

Stocks and shares ISAs, corporate bonds, gilts, unit and investment trusts and open-ended investment companies

NOT REGULATED

- Passing a client's details to an independent authorised firm with the client's consent for the firm to contact the client. No comments can be made on the advice given by the authorised firm.
- The giving of advice by a trustee or personal representative to sell an investment where they give this to a fellow trustee or personal representative or to a beneficiary under the trust, will or intestacy concerning their interest in the trust fund or estate provided no remuneration is received over and above that for services as a trustee.
- Arranging deals in investments, provided the arrangements are made by a person acting as a trustee or personal representative for, or with a view to, a transaction to be entered into either:
 - by that person and a fellow trustee or personal representative (acting in their capacity as such); or
 - by a beneficiary under the trust, will or intestacy.

Provided no remuneration received by the individual (or accountancy firm) over and above that for services as a trustee.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Providing the client with advice which leads to arranging the disposal of an investment.
 For example, in the course of tax advice or tax planning, the selection of realisable investments that have unrealised capital gains that give rise to opportunities equivalent to a 'bed and breakfast' type arrangement.
- On the instruction of a client, arrange with an authorised firm the selling of these types of investments.
- Implementing an investment plan in cooperation with an authorised firm.
- Explaining and evaluating advice given by an authorised firm, identifying whether this is suitable or not and providing alternative advice (unlike accumulation).

REGULATED AND REQUIRES FCA AUTHORISATION

• There are no additional investment activities which specifically require FCA authorisation.

Section 3: Personal protection

Non-investment insurance contracts

NOT REGULATED

- Discussing with a client about the need to take out a particular type of insurance (tax fee protection, medical insurance etc) that would be most appropriate, but not discussions on the merits or suitability of specific insurance products.
- Providing the client with the name and contact details of an authorised firm (but not passing client's details to the firm). No comments can be made on the advice given by the authorised firm.
- Providing information to clients about claims and assisting an insurer in the administration and performance of claims handling provided it is not conducted by way of business, for example, no remuneration of any kind is received.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Discussions with clients on the relative merits and suitability of a specific pure protection insurance contract such as tax fee protection insurance provided this is complementary to other professional services.
- Recommending that a client purchase a particular pure protection insurance contract where this doesn't relate to a large risk.
- Explaining and evaluating advice given by an authorised firm and offering alternatives where the advice is identified as unsuitable.
- Participating in insurance planning in cooperation with an authorised firm.

- On the client's instructions, arranging for an authorised firm to buy, subscribe to or underwrite a particular insurance contract (except large risks). This includes completing a proposal form for a client and/or sending the proposal form to an insurance broker or insurance company.
- Introducing a client to an authorised firm by passing a client's contact details to that firm to contact the client.
- Helping a client in the administration and performance of a particular insurance contract by assisting in the completion of the claim form or notifying the claim on behalf of a client or negotiating with the insurer on behalf of the client (except large risks).

REGULATED AND REQUIRES FCA AUTHORISATION

 Advice or arrangement of particular insurance contracts where these relate to large risks, or other insurance contracts that are unrelated to the professional services provided by a firm.

Section 4: Estate planning*

*PROBATE

Firms cannot undertake probate work unless they are granted accreditation by ICAEW, which is an approved regulator and licensing authority under the Legal Services Act 2007. Further information is available at icaew.com/probate

Pensions

NOT REGULATED

- Providing the client with the name and contact details of an authorised firm (but not passing the details of the client to the authorised firm).
 No comments can be made on the advice given by the authorised firm.
- Factual discussions with a client about passing their pension onto someone else as part of inheritance tax planning.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- On the instruction of a client, arrange with an authorised firm to dispose of some or all of the rights under a personal pension scheme.
- Passing a client's details to an authorised firm with the client's consent for the firm to contact the client.
- Explaining and evaluating advice given by an authorised firm and identifying whether this is suitable or not.
- Implementing investment planning in cooperation with an authorised firm.

REGULATED AND REQUIRES FCA AUTHORISATION

 Discussions with, or making a recommendation to, a client about the disposal of any rights or interests in a personal pension scheme and carrying out the transaction.

Term insurance

NOT REGULATED

- Factual discussions at a general level with a client about investments such as term assurance, whole of life insurance, insurance bonds etc, which can be used for tax planning purposes.
- Providing the client with the name and contact details of an authorised firm (but not passing the client's details to the authorised firm).
 No comments can be made on the advice given by the authorised firm.
- Providing information to clients about claims and assisting an insurer in the administration and performance of claims handling provided it is not conducted by way of business, for example, no remuneration of any kind is received.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

- Discussions with clients on the relative merits and suitability of a specific term insurance contract.
- Recommending that a client purchase a particular term assurance policy and executing the transaction provided it is incidental and complementary to the estate planning advice.
- Explaining and evaluating advice given by an authorised firm and offering alternatives where the advice provided is identified as unsuitable.
- Participating in insurance planning in cooperation with an authorised firm.
- On the client's instructions, arrange with an authorised firm to buy, sell, subscribe to or underwrite a particular insurance contract. This includes completing a proposal form for a client and/or sending the proposal form to an insurance broker or insurance company.

- Introducing a client to an authorised firm by passing a client's contact details to that firm for it to contact the client.
- Assisting clients with claims by notifying the claim to the insurer or completing the claim form where remuneration is received for this.

- Discussions with clients on the relative merits and suitability of a specific term assurance contract and recommending that clients purchase a particular contract where it relates to large risks.
- Discussions with, or making a recommendation to, a client to purchase unit linked or convertible term assurance.

Whole of life insurance/insurance bonds

NOT REGULATED

- General discussions with a client about different types of investments that provide IHT mitigation, but not discussions on the merits of a specific investment.
- Providing the client with the name and contact details of an authorised firm (but not passing the client's details to the firm).
- Providing information to clients in respect of claims and assisting an insurer in the administration and performance of claims handling.

REGULATED BUT CAN BE DONE WITH A DPB (INVESTMENT BUSINESS) LICENCE

Further involvement depends on whether or not the product is an insurance-based investment product under the Insurance Distribution Directive. This is a specialist area and the firm should check the position with an FCA authorised individual or firm.

If the product is an insurance-based investment product (sometimes referred to as a qualifying contract of insurance), FCA authorisation will be required to make a recommendation to enter into or sell the product.

If the product is an insurance-based investment product, a licensed firm can:

- Introduce a client to an authorised firm by passing a client's contact details to that firm for it to contact the client.
- Explain and evaluate advice given by an authorised firm and offer alternatives where the advice provided is identified as unsuitable.
- Participate in insurance planning in cooperation with an authorised firm.

 On the client's instructions, arrange with an authorised firm to buy, sell, subscribe to or underwrite a particular insurance contract. This includes completing a proposal form for a client and/or sending the proposal form to an insurance broker or insurance company.

- Discussions with clients on the relative merits of the purchase of whole of life insurance or insurance bonds.
- Recommending the purchase of whole of life insurance or insurance bonds and carrying out the transaction.

Gift and loan and discounted gift trusts

These should be treated in the same way as whole of life insurance/insurance bonds (see page 21).

More information

DPB (INVESTMENT BUSINESS) LICENCE

For information about how to apply for a DPB (Investment Business) licence and resources for licensed firms, please visit icaew.com/dpb

ICAEW PERSONAL FINANCIAL PLANNING (PFP) COMMUNITY

For those with an interest in personal financial planning, the PFP Community is dedicated to this increasingly important sector of the professional advice market. It provides a portal to access relevant content across a range of subjects that are of interest from either a professional and/or personal perspective. The community is open to ICAEW members and those that have a professional interest in this area. There is no joining fee. For further details, please visit icaew.com/pfp

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Our role as a world-leading improvement regulator

We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct.

ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).

Our role is to:

- authorise ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- support the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- provide robust anti-money laundering supervision and monitoring;
- monitor ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- investigate complaints and hold ICAEW firms and members to account where they fall short of standards;
- respond and comment on proposed changes to the law and regulation; and
- educate through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. There are more than 1.8m chartered accountants and students in the world, and more than 187,800 of them are members and students of ICAEW. All of the top 100 global brands employ chartered accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor over 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

We are proud to be a founding member of Chartered Accountants Worldwide, a network of 750,000 members across 190 countries which promotes the expertise and skills of chartered accountants around the world.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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^{*} Source: CAW, 2020 - Interbrand, Best Global Brands 2019