



THE APPOINTED REPRESENTATIVE SCHEME: AN OPPORTUNITY FOR DOING BUSINESS IN THE UK FINANCIAL MARKET

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London is the European financial centre, where a number of professionals and service providers can help startups to enter the financial arena. The financial sector has developed and flourished due to the rigorous and pro-active supervisory approach of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). Among the different types of legal structures that firms can adopt to conduct regulated activities there is the “Appointed Representative” (AR), that permits flexibility, allows to control the initial costs and is therefore a very appealing operating model for smaller firms starting their operations in London.

London is one of the most important cities in the world, competitive in everything and indisputably the powerful financial centre of Europe. There are a number of professionals and service providers which can help startups to enter into the financial arena.

The financial sector has developed and flourished due to the rigorous and pro-active supervisory approach of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). The FCA's role includes protecting consumers, keeping the financial industry stable, and promoting healthy competition between financial service providers.

Typically London has a very significant number and variety of small investment firms, operating along-side the bigger players. These firms are often advising and managing funds based in different jurisdictions such as

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the Cayman Islands, British Virgin Islands, Malta, Ireland or Luxembourg. The standard operating methodology is for these firms to manage and advise on the fund's investment allocation, whilst the fund's assets are held segregated by independent custodian banks. Generally, they outsource as much as possible of their non-core activities even if they are obliged to keep internally the main regulatory functions, such as Compliance (CF10) and Anti Money Laundering (CF11).

London is very familiar with seeing a variety of different types of legal structure for conducting regulated activities. One type of legal status is the "Appointed Representative" (AR); this status permits flexibility, allows for control over initial costs and is therefore a very appealing operating model for smaller firms starting their operations in London.

What is an AR?

Let's understand the AR status and process for then exploring the potential of this position in combination with the development of the concept of the "platform".

An AR is a firm or person who conducts regulated activities and acts as an agent for a firm that the FCA directly authorises (the AR's principal). There must be a written contract between the Principal and the AR documenting the arrangement. The Principal takes full responsibility for ensuring that the AR complies with FCA rules.

Principals can attract new customers and assists with the AR's understanding of regulatory processes. The ARs can use the Principals to leverage their new business, allowing them to use their professional skills and experience in order to start their own business.

With a positive approach we can say that especially in a challenging environment where UK regulations are becoming increasingly tough, having an equipped and professional platform able to assist the new teams in approaching the business independently can only be an opportunity for all. This is a win-win solution for the FCA, for entrepreneurs, for investors and for the prosperity of the UK economy.

In accordance with Section 39 of the Financial Services & Markets Act 2000 (FSMA), an AR is a person who:

- (a) is a party to a contract with an authorised person (his Principal) which:
 - (i) permits or requires him to carry on business of a description prescribed in the AR regulations (the Regulations); and



- (ii) complies with such requirements as are prescribed in those Regulations; and
- (b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing and who is therefore an exempt person in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

For the purposes of Section 39 of FSMA, an AR is exempt from the need to obtain its own authorisation from the FCA to conduct regulated activities.

In practice when the Principal appoints the AR, the Principal grants the AR the right to carry out specific regulated activities; however the Principal is still responsible for AR's activities. The FCA rules list the type of activities that an AR may conduct, amongst others they include:

- arranging (or bringing about) deals in investments;
- making arrangements with a view to transactions in investments;
- arranging safeguarding and administration of assets;
- advising on investments, and
- agreeing to carry on a regulated activity where the regulated activity is one of those above.

The AR cannot execute deals or manage investments, and cannot conduct any activity which does not fall within the scope of its Principal's permission. An AR is not exempt unless:

- (a) his Principal is an investment firm or credit institution;
- (b) the firm or institution is conducting investment services business.

and the AR is entered onto the FCA register.

Individuals that market and advise on investments are carrying out the customer function (CF30) under the Approved Persons regime. These individuals (including the AR firm) will need to be approved by the FCA before carrying out the regulated activities.

To be considered as a competent person to carry out a controlled function, the FCA will take into account a variety of factors and they will also require evidence of previous experience and knowledge of the individual in relation to the function they are applying for, the volume of business undertaken, copies of their qualifications and training sessions undertaken.



en to consider them as a competent person.

Prior to entering into an AR contract, the Principal should ensure that the AR is fit and proper to deal with clients on its behalf and that clients are given the same protection as if they had dealt directly with the Principal.

From the perspective of the Principal, the AR acts as an agent for the Principal. Generally, there can be two types of commercial arrangements in the market:

- AR Platforms – Professional service providers, typically operating in the regulatory compliance, and risk management areas. They offer AR platforms which allow clients conducting distribution and advisory activities to do so under their FCA permission.
- Intermediaries acting in an opportunistic way and hosting teams before entering into a partnership or strategic deal with them.

The Principal is responsible for the activities of the AR. It therefore needs to ensure its and the AR's business, complies with the following:

- regulatory requirements;
- keeping the FCA notified of any appointments or changes in ARs; and
- reporting to the FCA, where appropriate, on its activities and those of its ARs.

It is important that the Principal firm has a programme for and subsequently carries out sufficient checks to assess the AR and its staff. Following the checks, it is imperative that the Principal continues to maintain oversight over the AR to ensure that it treats its customers fairly and that it is fully compliant with regulatory requirements.

The Principal must have adequate controls and resources to ensure that its AR is fully compliant with regulatory requirements and that the AR continues to be:

- “fit and proper” when dealing with its clients;
- able to deliver the same level of protection to its clients as if their clients had dealt with the Principal itself. If the AR is not, the Principal must provide that protection itself; and
- be solvent, suitable and does not have close links which could pre-



vent the effective supervision of the AR by the Principal.

The AR's responsibilities include:

- understanding and complying with the regulatory requirements relevant to the business they conduct;
- providing the Principal with access to staff, premises and records to enable the Principal to carry out its supervisory responsibilities; and
- ensuring it has the relevant approved person(s), if required.

Upon reflection, it would appear that in order for both parties to benefit from the regime, transparency is one of the key ingredients. In a similar vein, maintaining an open channel of communication across offices is also key. For example, where an AR is situated in a separate office, it is the responsibility of the Principal to put in place additional measures to supervise the activity of the AR.

What if a firm becomes authorised rather than acting as an AR?

Should a firm wish to become directly authorised by the FCA and not act as an AR, it will be required to submit an application demonstrating that it can operate independently in accordance with the regulatory requirements. The FCA, generally, will make a decision within the earlier of:

- 6 months if receiving a complete application; or
- 12 months of receiving an incomplete application.

Most authorisation applications are processed within the statutory time period of 6 months. However, this time period is dependent on the activities, structure, and complexity of the firm and the quality of information provided.

There have been times where the FCA has communicated the fact that they are currently experiencing a period of exceptionally high volumes of applications being received, which is impacting their average completion times and the average time to allocate an authorisation application to a case officer. Applications can take up to 22 weeks to be assigned to a case officer. However, based on experience, the process is much faster in normal periods. Further, an authorised firm may need to comply with regulatory capital requirements.

In conclusion, we could say that with the AR regime new firms can start their own business, within the UK's regulated framework. This can be done in a quick, efficient and pragmatic way, and in a safe environment. The AR regime has the advantage for the firm it can act in its own



name and build up its own track record. It is still a popular business model and it looks to continue strongly in the future.