



UK Financial Promotions

Overview of regulatory environment in the UK

UK Financial Promotions

Regulatory Background: FSMA and the Financial Promotion Order (FPO)

Restrictions on Financial Promotion

S21 FSMA: Basic prohibition on any person communicating an invitation or inducement to engage in investment activity unless:

1. he is an authorised person [i.e. by the PRA or FCA], or
2. the content of the communication is approved by an authorised person, or
3. the communication is exempt.

"communicating"

e.g. can be real-time or not real-time; can be solicited or unsolicited

"invitation"

e.g. merely asking graciously; making a request; encouraging; soliciting

"inducement"

e.g. merely bringing about; prevailing upon; persuading

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Invitation/inducement to engage in investment activity

What does "engage in investment activity" mean?

(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a **controlled activity**; or

(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a **controlled investment**

Controlled activity includes:

- Dealing in securities
- Arranging deals in/managing/administering/advising on investments

Controlled investment includes:

- **Shares or stock** in the share capital of any body corporate (wherever incorporated) or any unincorporated body constituted under the law of a country/territory outside the UK
- **Excluded:** shares/stock in the share capital of:
 - An open-ended investment company
 - Building society incorporated in the UK/EEA
 - Credit unions incorporated in the UK/EEA
- Debentures/Loan stock/Bonds etc

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Territorial Scope

Subject to the availability of a relevant exemption the UK financial promotion regime applies to:

Communications made or directed from the UK to another place in the UK

Communications made or directed from the UK to overseas
(even if not sent to a UK based person)

Communications made or directed from overseas to anywhere
(whether or not in the UK)
if they are capable of having an effect in the UK

e.g. communications from overseas to the UK would be capable of having an effect in the UK.

e.g. the purchase of shares in an English company between two overseas parties will have an effect in the UK when the name of the shareholder is changed on the register of members.

NB: Exemptions for communications to overseas recipients that are not directed at persons in the UK

Even if the financial promotion falls within the territorial scope above, it would be exempt from the regime if the communication is:

1. Made (whether from inside or outside the UK) to a recipient outside the UK; or
2. Directed (whether from inside or outside the UK) *only* at persons outside the UK

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Territorial Scope

Exemption for communications to overseas recipients: Conditions

NB: for unsolicited real time communications to be exempt, they must be made:

- From a place outside the UK
- For the purposes of a business carried on outside the UK

When will a communication directed **from inside** the UK be regarded as directed **only at persons outside** the UK?

When will a communication directed **from outside** the UK be regarded as directed **only at persons outside** the UK?

In **any other case** where at least one of the conditions are met, the communication could be regarded as directed only at persons outside the UK

(NB: can still be the case even if none of the conditions are met!)

- (a) **Indicate** that it is **directed only at persons outside** the UK
- (b) **Indicate** that it **must not be acted upon by persons in** the UK
- (c) **Ensure** the communication is **not referred to in, or directly accessible from, any other communication** made/directed at persons in the UK
- (d) **Put in place proper systems and procedures** to prevent recipients in the UK (other than those to whom the communication might otherwise lawfully have been made) engaging in the relevant investment activity with the person directing the communication, a close relative, or a member of the same group;
- (e) **Include the communication in** —
 - i. a web site, newspaper, journal, magazine or periodical publication which is **principally accessed in or intended for a market outside the UK**;
 - ii. a radio or television broadcast or teletext service **transmitted principally for reception outside the UK**.

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Exemptions

Exemptions which *may* apply under the FPO:

- Article 19 (investment professionals)
- Article 43 (Members and creditors of certain bodies corporate)
- Article 48 (Certified high net worth individuals)
- Article 49 (High net worth companies, unincorporated associations etc)
- Article 50A (Self-certified sophisticated investors)
- Article 62 (Sale of a body corporate)
- Article 69 (Promotions of securities already admitted to certain markets)
- Article 70 (Promotions included in listing particulars)
- Article 71 (Material relating to prospectus for public offer of unlisted securities)

Of potential relevance:

Promotions by a body corporate
to its *members/creditors* in
relation to its *own shares/debt
instruments*

Promotions in relation to the *sale
of a body corporate*

Promotions to *High Net Worth*
companies and individuals

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Exemptions

(cont.)

Exemption	Note
Investment professionals (Art 19)	<p>Includes an authorised person, an exempt person, someone who carries on the controlled activity for the purpose of a business, a government/local authority/international organisation,</p> <p>E.g. where statements or briefings are only available to analysts who are, or who work for, authorised persons.</p>
Members and creditors of certain bodies corporate (Art 43)	Relates only to a relevant investment (e.g. shares, stocks, bonds, debentures) which is issued/to be issued by a body corporate (that is not an open-ended investment company) to its <u>own</u> members/creditors.
Certified high net worth individuals (Art 48)	<p>An individual who has signed within 12 months of the communication a statement. This includes stating that the individual had:</p> <ul style="list-style-type: none">• an annual income of £100,000 or more, and/or• net assets of £250,000 or more (not including any primary residence property). <p>The investment must be in relation to an <u>unlisted company</u>.</p>

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Exemptions

(cont.)

Exemption	Note
High net worth companies, unincorporated associations etc (Art 49)	<p>Includes:</p> <ul style="list-style-type: none">• Body corporate which has, or is a member of the same group as an undertaking which has, a called-up share capital/net assets of not less than:<ul style="list-style-type: none">• £500,000 if >20 members, or otherwise• £5 million (also applies to unincorporated associations or partnerships)• Trustee of a high value trust (at least £10 million)
Self-certified sophisticated investors (Art 50A)	<p>An individual who has signed within 12 months of the communication a statement. This includes stating that the investor has e.g. been a member of a network of business angels for the previous 6 months, and/or have made more than one investment in an unlisted company in the previous 2 years, and/or has been working in the private equity sector, and/or is a director of a company with an annual turnover of at least £1 million.</p> <p>The investment must be in relation to an unlisted company.</p>
Sale of a body corporate (Art 62)	<ul style="list-style-type: none">• <u>At least 50%</u> of the voting shares, or• Together with any shares already held by the acquirer, consist of at least the percentage already held, and• Is between parties who are a body corporate, partnership, single individual or a group of connected individuals

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Exemptions

(cont.)

Exemption	Note
Promotions of securities already admitted to certain markets (Art 69)	E.g. Financial promotions made during the course of analyst briefings by listed and AIM companies
Promotions included in listing particulars (Art 70)	Also applies if included in supplementary listing particulars or a prospectus approved in line with Prospectus Rules or by the competent authority of another EEA state.
Material relating to prospectus for public offer of unlisted securities (Art 71)	Applies if the only reason for considering the prospectus to be an invitation/inducement is that it e.g. states the name and address of the person offering the securities; states the nature and nominal value of the securities; gives instructions for obtaining a copy of the prospectus.

UK Prospectus Regulations

Brief Overview

Obligation to publish prospectus

In general, an obligation to publish prospectus if:

- securities offered to the public; or
- securities admitted to trading on a regulated market

Exemptions

- An offer of securities with a total consideration of less than EUR 8 million (or equivalent)
- An offer of securities addressed solely to qualified investors
- An offer of securities addressed to fewer than 150 natural or legal persons in the UK