

All firms



FSA[®]

Financial Services Authority

Firms seeking to change their legal status

If your firm is authorised by the FSA and you are thinking of changing its legal status, for example from being a partnership to a limited company, the new legal entity must apply for FSA authorisation.

This is because the Financial Services and Markets Act 2000 (FSMA) does not permit us to transfer authorisation from one legal entity to another. As we have already authorised your existing firm, we already know a good deal about your business and staff. So we have produced a tailored application pack for change of legal entity applications. This is because you do not have to give us as much detail as those firms applying that have no previous relationship with us.

To use this 'change of legal status application pack' your firm must satisfy certain criteria set out in a checklist on its first page. These criteria assume there will be a minimal change in the regulated activities, business and staff of the existing authorised firm. If your new legal entity does not satisfy these criteria, you must use one of the other application packs available.

www.fsa.gov.uk/Pages/Doing/how/index.shtml

We do charge an application fee for firms using the 'change of legal entity application pack'. But, because we already know a good deal about your business, this is half the standard fee. So a 'straightforward' application is £750 instead of £1500 and a 'moderately complex' is £2500 instead of £5000. Most financial advisers, mortgage brokers and general insurance intermediaries will be straightforward applications.

If you are unsure what the fee for your firm is, please see

<http://fsahandbook.info/FSA/html/handbook/FEES/3/Annex1>

The following frequently asked questions provide further information you may find useful if you are not sure whether you need to submit a new application for authorisation.

I am currently a partnership and either changing to a sole trader or to another partnership. What information do you require?

The Treasury made some changes that we believe help partnerships or unincorporated associations considering applying for authorisation following a change in their membership. Its Regulatory Reform Order amended section 32 of the Financial Services and Markets Act (FSMA) with the effect that more partnerships and unincorporated associations can continue carrying on regulated activities without having to re-apply for authorisation when their members change.

In particular, it means that the remaining partner of a two person partnership can continue carrying on regulated activities through that firm's existing authorisation in the event of the death or resignation of the other partner. In the case of larger partnerships, where there is either

Firms seeking to change their legal status

All firms

Continued: I am currently a partnership and either changing to a sole trader or to another partnership. What information do you require?

an increase or decrease in the number of partners, continuity of authorisation will be maintained providing that the partners are succeeding to the business of the firm.

Partnerships and unincorporated associations affected by such a change in their membership still need to notify us of such changes in line with our rules, see SUP 15:

<http://fsahandbook.info/FSA/html/handbook/SUP/15>

You can find out more about the Regulatory Reform Order and the changes it introduced in our press release www.hm-treasury.gov.uk/press_77_07.htm

These changes were effective from 12 July 2007.

I'm still unsure whether our circumstances require a new application

You should ask your supervisor or the Firm Contact Centre.

Hardly anything is changing. Why can't I just send you a notification of the change in legal status?

Actually, there may be many issues for us to consider when your firm changes its legal status.

For example:

- As a regulator charged with ensuring that customers are treated fairly, we must understand what is happening to those customers' interests when an existing authorised firm proposes to change its legal status. This is because those customers could be at risk of losing their existing protection as a result of that change.
- You may be limiting your liability or exposing yourself to greater liability.
- The way your firm can be financed and capitalised may be changing.
- Your new firm may need to take out new professional indemnity insurance.
- You may become subject to new law such as the Companies Act.
- It is likely that some controlled functions the existing approved persons perform will change and approvals are required.

Under FSMA, you are establishing a new firm that must be authorised by us as having satisfied the threshold conditions in its own right before it can carry on regulated business.

Given that you already know quite a lot about my business, it won't take as long as an authorisation application from a completely new firm, will it?

If it is straightforward, it shouldn't take longer than six weeks for us to process your application.

What happens to my existing authorised firm?

By completing the change of legal status pack you will also be applying to cancel the current firm's authorisation. This will take effect when the new firm is authorised. For further details on the cancellation process see: www.fsa.gov.uk/Pages/Doing/Cancel/index.shtml

I have already paid my annual fees for the current firm; will I have to pay these again?

As part of the tailored change of legal entity process, we will credit any fees already paid in the current financial year for the current legal entity to the new applicant's account once it is authorised.

My existing firm is quite profitable; will you take this into account when considering the application for the new legal entity?

We will take some comfort from this. However, the new firm will have to meet its own financial resource requirements. You should also be aware that personal assets do not count towards the financial resource requirements of limited companies or limited liability partnerships.

You should keep in mind that for purposes of financial resources, the new legal entity is an entirely new firm which will need to receive capital injections on this basis and you cannot treat retained profits and reserves from the existing firm as profits or reserves for the new firm.

My new firm has goodwill on its balance sheet; will that cause a problem?

Potentially, this can cause a significant problem. Goodwill is an intangible asset and these assets do not count towards a firm's financial resource requirement. Firms with goodwill on their balance sheet should refer to the relevant prudential source book and, if necessary, seek guidance from an accountant. You may find the guidance in the Common Financial Resource Issues factsheet useful: www.fsa.gov.uk/Pages/Doing/how/help/factsheets/index.shtml

What should I tell my customers?

If you have any ongoing contractual agreements with your customers, you must contact them and agree either to amend their existing contracts or to agree new contracts to take into account the change in your firm's legal entity. If you have a more ad hoc relationship, you can let your customers know about the change in the legal entity as and when you next deal with them.

Where do I stand if customers make a complaint about business carried on through my current authorised firm?

We expect our firms to treat their customers fairly. This includes the business they carried on through any predecessor legal entity. So we require your firm to sign a deed poll as part of the change of legal entity application pack. This commits the new legal entity's principals to deal with the complaints of the customers of the existing authorised firm as if they had been made in relation to the business of the new legal entity. If you think the interests of the existing firm's customers can be best served by another means, we can discuss this as part of the new legal entity's application.

Will I keep my FSA number?

No. Each authorised firm gets a unique number. So you will need to inform the product providers you deal with so they can update their records.