

Banking laws and regulations

Law



Have the UK banking law regulation reforms introduced after the 1st of April 2013 led to increased and sufficient protection to promote financial stability?

Abstract

Banking law regulation has advanced significantly since the global financial crisis was first instigated in 2008. Most notably, on the 1st April 2013 the Financial Services Authority (FSA) was abolished and its functions transferred to two new regulators: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). The Bank of England (BoE) also took over the FSA's responsibilities for financial market infrastructures and the Financial Policy Committee (FPC) was established. Despite these reforms, it is questionable the financial industry is being better regulated and it seems as though further changes may still be needed.[1]

Introduction

The Financial Services Act (FSA) 2012 came into force on the 1st of April 2013 in order to establish a new regulatory framework for the financial system. Under the new Act, the Financial Services Authority (FSA) was replaced by two new regulators; the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). A Financial Policy Committee of the Bank of England was also created and the Bank of England was provided with the power to regulate and provide stability to the financial system.[1]

This new regulatory structure became known as the 'twin-peaks' model and was considered to be a "major milestone for the Regulatory Reform Programme." [2] The Act made significant amendments to The Financial

Services and Markets Act (FMSA) 2000 and restructured and broadened the law relating to market manipulation and misleading statements and impressions. The scope of the special resolution regime under the Banking Act (BA) 2009 was also extended and a new category of regulated activity in relation to benchmarks (e. g. LIBOR) and credit ratings was created. The approval, supervision and discipline of sponsors regime under the FSMA was also changed and the regulation of consumer credit was transferred to the FSA. This study will discuss these new regulatory regimes in greater detail in order to consider their effectiveness.

Research Aims and Objectives

The aim of this research is to find out the extent to which the 2013 reforms have proven effective in providing increased and sufficient protection to promote financial stability.

Research Question

- Is the banking industry being regulated effectively?
- Have the 2013 reforms improved the regulation of the banking industry?
- Are further changes needed to the banking system to ensure that financial stability is being promoted?

Key Words

1. Financial Industry
2. Banking System
3. Financial Stability

4. Banking Law

5. Twin Peaks and Banking

6. Banking Regulation

Methodology

A secondary research approach will be undertaken for this study by accessing relevant text books, journal articles, governmental reports and online legal databases. This will enable me to acquire the appropriate information that is needed and will allow me to analyse existing literature in this area. This will be a more cost effective and time saving way to undertake the research. This is appropriate for this particular assignment as it would be extremely difficult to obtain primary research from large organisations such as the FSA. A Qualitative research method will be used as this study requires a descriptive outcome as opposed to a predictive one.

Literature Review

The aim of a bank is to provide financial services to individuals and organisations by enabling them to either borrow or deposit money, whilst also creating credit. However, because of the complex nature of the modern banking business, a lack of regulation appears to exist in this area. This is evident by the recent financial crisis which seemed to demonstrate that banks are capable of taking extortionate risks without any intervention. This is damaging to the economy as well as consumers. However, because of how difficult it is to determine what a bankers business should consist of, problems arise when trying to establish how the banking industry should be regulated. This literature review will provide an overview as to how effective

the current regulatory system is by reviewing banking law as it currently stands. This will be compared to the approach that was undertaken prior to the financial crisis and an assessment as to whether more effective regulation now exists as a result of the 2013 reforms will be provided.

The Financial Services and Markets Act (FMSA) 2000 regulated the banking and insurance sector and provided the FSA with the power to regulate the financial system. The objectives under the Act were to provide; “(a) market confidence; (b) public awareness; (c) the protection of consumers; and (d) the reduction of financial crime.” However, since the global financial crisis (GFC) was instigated, it became apparent that a new regulatory structure was needed. Many argued that the system failed to adequately account for the complexity of modern financial markets and the nature and pace of financial innovation.”[3] A more interventionist approach was said to be needed to that those providing financial services could be regulated better. [4] This would help to combat financial crime, which was considered one of the main reasons for the GFC.[5]

The FSA was largely criticised for failing to keep abreast with the advances in society and that as a result they were no longer required. Hence, it was suggested that it was only a matter of time before the FSA was abolished completely: “ the diminished role for the FSA is simply a reflection of this new reality.”[6] Whilst there does appear to be true to a certain extent, it appears that the role of the FSA did help to regulate the financial sector more adequately over the years and that many banking failures are likely to have been avoided since the FMSA was first implemented. This was stressed by Southern when he considered the importance of regulation in the financial

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sector[7] and by Sergeant who pointed out that; “ the whole basis of financial regulatory law was recast on a completely updated and integrated basis.”[8] Again, this highlights the importance of the FSA’s powers that were conferred upon it by the FMSA.

The Banking Act 2009 was, nonetheless, introduced as an emergency response to the GFC and was intended to provide greater powers to bankers to enable them to regulate the financial sector more effectively. Hence, it was felt that there existed inherent failures within the UK banking system and that vital changes were thereby needed.[9] The Act was considered a welcoming development in preventing future financial panics from taking place.[10] Conversely, it was said that the Bank’s powers were too limited and that as a result the banking system could not be effectively regulated. It was therefore suggested that the Bank should be privatised so that more sufficient banking regulation can be effectuated.[11]

Since the 2012 banking law reforms began, a number of further changes have been made to the financial system. As well as creating the FSA, the PRA and the FPC, the Bank of England’s role as the supervisor for financial market infrastructure (FMI) was also expanded by the 2012 Act by “ adding securities settlement systems and central counterparty regulation to its existing responsibility for recognised inter-bank payment systems.”[12] Furthermore, the Financial Services (Banking Reform) Act 2013 was implemented which was intended to provide the HM Treasury and the PRA with the power to implement the recommendations of the Independent Commission on Banking (ICB) on ring-fencing requirements for the banking sector.[13]

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The FCO has been subjected to great deal of criticism since it was established with many arguing that little benefit has been made to the financial system under the new regulatory structure.[14] Accordingly, significant changes were made to the financial system as a result of the GFC, yet it seems as though further changes are expected to take place since there are increasing concerns about the ways in which financial services organisations (FSO's) are conducting business.[15] It cannot be said that FSO's are adequately preserving the interests of its consumers and unless FSO's have effective risk management strategies in place, a lack of consumer protection will ensue.

The FSA 2012 has made great attempts to rectify the difficulties caused by the previous law, yet it remains to be seen whether the new regulatory regime goes far enough. Nevertheless, the existing offence for misleading statements and practices that is contained under s. 397 of FSMA is being repealed and replaced by three separate offence; misleading statements (s. 89); misleading impressions (s. 90) and misleading statements in relation to benchmarks (s. 91).[16] This offence is broader than s. 397 and includes those statements that were made recklessly as well as those made intentionally. This makes it a lot harder for FSO's to mislead consumers and ensures that more effective regulation is in place. The changes that have been made to the BA 2009 include the extended special resolution regime to certain UK investment firms, group companies of UK banks and UK clearing houses. Under the new regime, the PRA will be responsible for promoting the stability of the financial system by regulating all deposit taking institutions. [17] The FCA will be responsible for regulating retail, wholesale and financial

markets, which increases protection and seeks to achieve financial stability overall.

Conclusion

It is questionable whether the current regulatory regime is sufficient in regulating the banking industry,[18] although significant improvements have in fact been made.[19] Nevertheless, given the complexity of modern banking, it will remain difficult to regulate this area effectively for the foreseeable future. Given that the changes are fairly recent, it remains to be seen just how effective the FCA is in regulating this industry. Given the importance of having appropriate mechanisms in place to deal with any disruptions to the financial system, the changes that have been made so far are likely to be welcomed.[20] This is because, the new twin peaks model is intended to strengthen the current approach to financial regulation, whilst also establishing a more resilient and stable financial system.[21] It is likely that FSO's will be put under greater pressure to ensure that they are conducting their business in an appropriate manner as tighter controls will be in place. Therefore, whilst it is likely that future changes are still needed, the reforms that were implemented in 2013 have led to increased and sufficient protection to promote financial stability.

Data Analysis

In analysing the data, a process will be undertaken which allows each component of the data to be inspected using logical and analytical reasoning. This will allow an assessment to be made as to whether all of the data is effective and reliable. In doing so, the data will be gathered from a <https://assignbuster.com/banking-laws-and-regulations/>

variety of sources and then reviewed and analysed so that an appropriate conclusion can be drawn. The quality of the research will therefore be judged in “ relation to the resources available and the effectiveness with which those resources have been used to investigate the particular topic in question.”[22]

Ethics

When undertaking any type of research, there are certain ethical rules of conduct which need to be followed. For example, any data that is collected must be used in a way that is “ honest, unbiased, sincere, free from errors or negligence, open to critique and it must protect confidential communications.”[23] A risk-analysis approach can be adopted in order to achieve this as well as adhering to the BPS guidelines.[24]

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