

Chapter 1

Application and purpose



1.1 Application and purpose

Application

1.1.1 **G** *MCOB* applies as described in this chapter.

Purpose

1.1.2 **G** The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules, evidential provisions* and *guidance* in *MCOB* apply.



1.2 General application: who? what?

- 1.2.1 **R** (1) This sourcebook applies to every *firm* that:
- (a) carries on a *home finance activity* (subject to the business loan and loans to *high net worth mortgage customers* application provisions); or
 - (b) *communicates or approves a financial promotion of qualifying credit, of a home purchase plan, of a home reversion plan or of a regulated sale and rent back agreement.*
- (2) Where a *firm* has outsourced activities to a *third party processor*, any rule in MCOB which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as requiring disclosure of the identity of the *firm* (or *appointed representative*, as appropriate) which is taking responsibility for the acts and omissions of the *third party processor* when carrying on the outsourced activities.

1.2.1A **G** *Firms which outsource regulated activities are reminded of the guidance on outsourcing in ■ SYSC 3.2.4 G and ■ SYSC 8.*

Firm types and the home finance activities

- 1.2.2 **G** (1) This sourcebook applies to activities carried out in respect of *regulated mortgage contracts, equity release transactions, home purchase plans, and regulated sale and rent back agreements*. Together, these products are referred to as *home finance transactions*.
- (2) *Lifetime mortgages and home reversion plans* are together referred to as *equity release transactions*.
- (3) The application of most of this sourcebook is expressed by reference to four types of firm: lenders/providers, administrators, arrangers, and advisers. Arrangers and advisers are together referred to as intermediaries. This includes those firms that provide business loans to customers under a regulated mortgage contracts (see ■ MCOB 1.2.3 R to ■ MCOB 1.2.9 G). A single firm may fall into more than one of these types. *PERG 4* contains detailed *guidance on regulated mortgage activities* and *PERG 14* contains detailed *guidance on home purchase activities, reversion activities and regulated sale and rent back activities*.

Business loans and loans to high net worth mortgage customers: application of MCOB

- 1.2.3** R In relation to a *regulated mortgage contract* for a business purpose

 - (1) *MCOB* applies if the *customer* is not a *large business customer*; and
 - (2) if *MCOB* applies, a *firm* must either:
 - (a) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* for a business purpose in the remainder of *MCOB*); or
 - (b) comply with *MCOB* in full, but taking account of all those tailored provisions, including ■ **MCOB 1.2.7 R**.

- 1.2.3A** R In relation to a *regulated mortgage contract* with a *high net worth mortgage customer*, a *firm* must either:

 - (1) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* with *high net worth mortgage customers* in the remainder of *MCOB*); or
 - (2) subject to ■ **MCOB 1.2.9C R**, comply with *MCOB* in full, but taking account of all those tailored provisions, including ■ **MCOB 1.2.7 R**.

- 1.2.3B** R Where any provision of *MCOB* is expressed to apply in respect of a *high net worth mortgage customer*, it applies in respect of joint borrowers (or potential borrowers) if one of them satisfies that definition in his own right.

- 1.2.3C** G In relation to an *MCD regulated mortgage contract* with a *high net worth mortgage customer*, to comply in full with *MCOB*, a *firm* does not need to comply with those provisions in *MCOB* that are expressed not to apply to *MCD regulated mortgage contracts*.

- 1.2.4** G The tailored provisions are those in the sections 'Business loans and loans to high net worth mortgage customers: tailored provisions' set out in each relevant chapter.

- 1.2.4A** G Certain other provisions of *MCOB* apply in all cases in respect of *high net worth mortgage customers* or of transactions which are solely for a business purpose. The application of the tailored and other provisions for *high net worth mortgage customers* and transactions for a business purpose are summarised in the table at ■ **MCOB 1.2.4B G**.

- 1.2.4B** G **Table of provisions applicable to business loans and high net worth mortgage customers: this table belongs to MCOB 1.2.4AG**

Provisions	Tailored provisions or applicable in all cases?	For business loans only, are the provisions applicable to all business loans, or only where the loan is solely for a business purpose?

Various of the provisions in MCOB 4.7A and MCOB 4.8A	Applicable in all cases	Applicable only where loan is solely for a business purpose
MCOB 4.9	Tailored	Applicable to all business loans
MCOB 5.7	Tailored	Applicable to all business loans
MCOB 6.7	Tailored	Applicable to all business loans
MCOB 7.7	Tailored	Applicable to all business loans
Various of the provisions in MCOB 11.6	Applicable in all cases	Applicable only where loan is solely for a business purpose
MCOB 12.6	Tailored	Applicable to all business loans
MCOB 13.7	Tailored	Applicable to all business loans

1.2.5 G (1) In order for a loan to fall within the definition of a *regulated mortgage contract*, at least 40% of the total of the land to be given as security must be used as or in connection with a dwelling. Therefore, the variation in approach provided for in ■ MCOB 1.2.3 R(2) can only apply where the loan being used for a business purpose is secured against a property at least 40 per cent of which is used as a dwelling. It cannot apply to a loan secured on property that is used solely for a business purpose.

(2) Whether a *regulated mortgage contract* is, or is solely, for a business purpose will be a matter of fact to be determined by a *firm* (in accordance with ■ MCOB 1.2.9D R where applicable) depending on the individual circumstances of each case. In the FCA's opinion, a *regulated mortgage contract* secured, for example, on the borrower's own home, but used to finance the purchase of a single buy-to-let property will not be for a business purpose.

1.2.6 G In determining whether a *customer* is a *large business customer* for the purposes of ■ MCOB 1.2.3 R(1), a *firm* will need to have regard to the figure given for the *customer's* annual turnover in the *customer's* annual report and accounts or business plan. In addition, a *firm* may rely on information provided by the *customer* about the annual turnover, unless, taking a common-sense view of this information, it has reason to doubt it.

Business loans and loans to high net worth mortgage customers: additional requirements if tailored route is used.....

1.2.7 R In relation to a *regulated mortgage contract* for a business purpose or with a *high net worth mortgage customer*, if a *firm* has opted for the tailored route, it must adopt the following modifications to the sourcebook:

(1) substitute an alternative description of the facility provided under the *regulated mortgage contract* for 'mortgage' where that term is used in any disclosure;

- (2) substitute the term 'illustration' for 'Key facts illustration' when opting to use the tailored business loans or loans to *high net worth mortgage customers* rules in ■ MCOB 4.9, ■ MCOB 5.7, ■ MCOB 6.7 or ■ MCOB 7.7; and
 - (3) limit disclosure to facilities provided under the *regulated mortgage contract*.
- 1.2.8** G (1) *Firms* are reminded of the requirement in MCOB 3A.2.1R that any communication should be fair, clear and not misleading when substituting an alternative for the term 'mortgage' in accordance with ■ MCOB 1.2.7 R(1).
- (2) Possible alternatives to the term 'mortgage' include, for example, 'secured overdraft', 'secured loan' or 'secured business credit'.
- 1.2.9** G The disclosure *rules* in *MCOB* place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for a business purpose or with a *high net worth mortgage customer* who is not a *consumer* under an *MCD regulated mortgage contract*, a *firm* should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the *regulated mortgage contract*.
- 1.2.9A** G **Home purchase plans**
 For detail of the tailored provisions applying to *home purchase plans*, see the section on 'home purchase plans' set out in each relevant chapter.
- 1.2.9B** G **Provisions for professional customers**
 Certain provisions of ■ MCOB 4.7A and ■ MCOB 4.8A apply in respect of *professional customers*. Where they apply, they provide greater flexibility for *firms*.
- 1.2.9C** R **Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer**
 A *firm* may not treat a *customer* as being a *high net worth mortgage customer* for the purposes of *MCOB* unless either:
- (1) it is aware, from evidence already in its possession as a result of a business relationship between it and the *customer*, that the *customer* satisfies the definition of *high net worth mortgage customer*; or
 - (2) it has first obtained a written statement which:
 - (a) confirms that the *customer* satisfies the definition of *high net worth mortgage customer*;
 - (b) specifies the period for which it is valid, which includes the time when the *regulated mortgage contract* is entered into; and
 - (c) is signed by a suitably qualified professional adviser of the *customer* who is not an *associate* of the *firm* or of the *customer*.

1.2.9CA **G** Where the *regulated mortgage contract* is a *legacy CCA mortgage contract*, the *firm* should not treat the *customer* as a *high net worth mortgage customer* for the purposes of *MCOB* unless it is aware from evidence in its possession that the *customer* satisfied the definition of *high net worth mortgage customer* at the time the contract was entered into.

1.2.9D **R** A *firm* must not treat a loan as being solely for a business purpose for the purposes of *MCOB* unless it has reviewed a business plan provided by the *customer* which provides credible evidence that that is the case.

1.2.9E **R** A *firm* must not treat a *customer* as being a *professional customer* for the purposes of *MCOB* unless it has credible evidence that the *customer* satisfies the definition.

1.2.9F **R** A *firm* must keep the evidence in ■ **MCOB 1.2.9CR (1)** and ■ **MCOB 1.2.9ER**, the business plan in ■ **MCOB 1.2.9DR** and the written statement in ■ **MCOB 1.2.9CR (2)** for not less than three years from the date on which it was obtained or, if later, used to satisfy ■ **MCOB 1.2**.

Authorised professional firms

1.2.10 **R** *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for ■ **MCOB 3A** (Financial promotions and communications with customers).

1.2.11 **G** *Authorised professional firms* should be aware of the following:

- (1) ■ **PROF 5** (Non-mainstream regulated activities); and
- (2) **MCOB 3A.1.3R** (Authorised professional firms) and the exception in article 55 of the *Financial Promotion Order* (Communications by members of the professions) which applies in relation to *financial promotion of qualifying credit* or of a *home reversion plan of authorised professional firms* under **MCOB 3A.1.9R(2)** (Exemptions).

Pre-contractual arrangements by a home finance provider

1.2.12 **R** In *MCOB* the activities of a *home finance provider* which would be *arranging* but for article 28A of the *Regulated Activities Order* (Arranging contracts or plans to which the arranger is a party), are to be treated as *arranging* and therefore also as *home finance activities*.

1.2.13 **G** The effect of article 28A of the *Regulated Activities Order* would normally mean that arrangements made by a party to a *home finance transaction* would not fall within the *home finance activity* of *arranging*. So in a direct sale, a *home finance provider* would not be carrying on the *regulated activity* of *arranging* but, where the transaction proceeds to completion, would instead be involved in a *regulated activity* comprising *entering into a home finance transaction*. However, the provisions in *MCOB* on *arranging home finance transactions* are applied to pre-contractual arrangements by a *home finance provider*.

MCD application

1.2.14

G

(1) The provisions in the table in (2) apply only in relation to an *MCD regulated mortgage contract*.

(2) This table belongs to (1).

Chapter	Provisions
MCOB 2A	Whole chapter
MCOB 3A	MCOB 3A.2.4R(2) and MCOB 3A.5
MCOB 3B	Whole chapter
MCOB 4	MCOB 4.4A.4R (1)(a) and (3), MCOB 4.4A.8R (1)(d) and MCOB 4.4A.8R (2)(e)
MCOB 4A	Whole chapter
MCOB 5A	Whole chapter
MCOB 6A	Whole chapter
MCOB 7A	Whole chapter
MCOB 7B	Whole chapter
MCOB 10A	Whole chapter
MCOB 11	MCOB 11.6.21A R and MCOB 11.6.21B G
MCOB 11A	Whole chapter

1.2.15

G

(1) In the table in (2), the provisions in column (1) apply in relation to an *MCD regulated mortgage contract* instead of the provisions in column (2).

(2) This table belongs to (1).

(1) MCD requirement	(2) Non-MCD requirement
MCOB 5A	MCOB 5
MCOB 6A	MCOB 6
MCOB 7B	MCOB 7.6.7R to 7.6.17
MCOB 10A	MCOB 10

1.2.16

R

(1) For any *regulated mortgage contract* which is not an *MCD regulated mortgage contract*, a *firm* may elect to comply with any part of *MCOB* as if the contract was an *MCD regulated mortgage contract*.

(2) Where the contract in (1) is an *MCD exempt lifetime mortgage* that is not a *retirement interest-only mortgage*, the *firm* must continue to provide an *illustration* in accordance with the relevant requirements in *MCOB*, rather than an *ESIS*.

1.2.17 **G** The purpose of **■ MCOB 1.2.16 R** is to allow a *firm* to apply provisions of *MCOB* which implement the *MCD* for an *MCD regulated mortgage contract* to *regulated mortgage contracts* that are not *MCD regulated mortgage contracts*, save in respect of *MCD exempt lifetime mortgages* (other than *retirement interest-only mortgages*) where the *firm* must continue to provide an *illustration* in accordance with the relevant requirements in *MCOB*, rather than an *ESIS*.

1.2.18 **R** A *firm* that makes the election in **■ MCOB 1.2.16 R** to treat an *MCD exempt bridging loan* as if it were an *MCD regulated mortgage contract* must calculate the *APRC* for the *MCD exempt bridging loan* by applying the following additional assumptions:

- (1) the *total amount of credit* must be deemed to be drawn down in full and for the duration of the *MCD exempt bridging loan*; and
- (2) if the duration of the *MCD exempt bridging loan* is not known, the *APRC* must be calculated on the assumption that the duration of the *credit* is 12 months.

Identifying MCD credit agreements

1.2.19 **G**

- (1) To meet the definition of an *MCD credit agreement* (including a *foreign currency loan*), a contract must come within the definition at the time it is entered into.
- (2) The effect of (1) is that:
 - (a) a contract which, at the time it is entered into, comes within the definition of an *MCD regulated mortgage contract* (and a *foreign currency loan* where applicable) remains an *MCD regulated mortgage contract* (and a *foreign currency loan* where applicable) throughout its remaining term, even if there are subsequent periods of time when some or all of the conditions set out in the definition are not satisfied; and
 - (b) unless the contract is subsequently replaced with a new contract which meets the conditions in the definition, a contract which does not start out as an *MCD regulated mortgage contract* or a *foreign currency loan* cannot subsequently become one, even if the contract is subsequently amended so that it meets all the conditions set out in definition.

Applicability of MCOB to regulated mortgage contracts which had previously been regulated credit agreements

1.2.20 **G** [deleted]

1.2.21 **G**

- (1) By virtue of amendments to articles 60B, 60C and 61 of the *Regulated Activities Order* which came into force on 21 March 2016, certain *regulated credit agreements* became *regulated mortgage contracts* (but see the transitional provisions described in (3) below). The provisions of *MCOB* that apply to these *regulated mortgage contracts* include:
 - (a) **■ MCOB 7** (Disclosure at start of contract and after sale);

- (b) ■ MCOB 12 (Charges); and
 - (c) ■ MCOB 13 (Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans).
- (2) Where a *regulated mortgage contract* is a *second charge regulated mortgage contract* which was entered into before 21 March 2016, MCOB applies to the contract from 21 March 2016.
- (3) Where a *regulated mortgage contract* is a *legacy CCA mortgage contract* secured by a *first charge legal mortgage*, MCOB applies to the contract from the earliest of:
- (a) the date on which the *lender* first acts in compliance or purported compliance with *rules* in the *FCA Handbook* which apply to *regulated mortgage contracts* in respect of the contract;
 - (b) the date from which the *lender* notifies the borrower in writing that it will act in compliance with such *rules* in respect of the contract; and
 - (c) 21 March 2017.

Application of MCOB where agreements are facilitated by a P2P platform

1.2.22

R

- (1) A provision of MCOB that applies to a *mortgage lender*, a *home purchase plan provider*, a *home reversion provider* or a *SRB agreement provider* also applies to a *P2P platform operator* facilitating a *regulated mortgage contract*, *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* where the lender, plan provider, reversion provider or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in ■ MCOB 15.
- (2) A provision of MCOB that applies to a *mortgage administrator* or a *home purchase administrator* also applies to a *P2P platform operator* administering a *regulated mortgage contract* or *home purchase plan* on behalf of a lender or plan provider who did not require permission to enter into the transaction. It applies subject to the provisions in ■ MCOB 15.
- (3) Subject to ■ MCOB 1.2.22R(5), ■ MCOB 1.2.22R(4) applies where:
 - (a) a *P2P platform operator* facilitates an arrangement under which a number of *persons* provide home finance to a single *customer*, either individually under separate contracts, or jointly and severally under a single contract;
 - (b) by virtue of ■ MCOB 1.2.22R(1), a provision of MCOB (as modified by ■ MCOB 15) applies to the *P2P platform operator*;
 - (c) the provision as modified requires the *P2P platform operator* to make a disclosure or notification in respect of the entirety of the arrangement; and
 - (d) the provision requires one or more of the *home finance providers* under the arrangement to make the same disclosure or notification in respect of their individual contract, or their share of the joint and several contract.

- (4) The *home finance provider* is not required to comply with the provision referred to in ■ MCOB 1.2.22R(3)(d).
- (5) ■ MCOB 1.2.22R(4) does not apply where non-compliance with the provision would be incompatible with *EU* law.

1.2.23

G

- (1) The purpose of ■ MCOB 1.2.22R(3) to ■ 1.2.22R(5) is to avoid imposing overlapping requirements on the *P2P platform operator* facilitating a home financing arrangement and any *firms* who may participate in that arrangement as finance providers, to the extent that is compatible with *EU* law, in particular the *MCD* and the *Distance Marketing Directive*. The table below provides non-exhaustive guidance on *MCOB* provisions with which a *firm* may need to comply, notwithstanding ■ MCOB 1.2.22R(3) and ■ MCOB 1.2.22R(4).
- (2) This table belongs to (1).

MCOB provisions	Description
MCOB 5A.4.1R	Provision of a European Standardised Information Sheet (ESIS): timing
MCOB 6.5.6R	Distance contracts with retail customers
MCOB 6.8.5R	Distance contracts with retail customers
MCOB 7.6.1R	Notification of payment changes and other material changes to terms and conditions
MCOB 7.6.7R	Further advances
MCOB 7.6.17R	
MCOB 7.6.18R	Rate switches
MCOB 7.6.22R	Addition or removal of a party to the contract
MCOB 7.6.28R	Changes to the amount of each payment due

1.2.24

R

- In this section and in ■ MCOB 15:
- (1) a reference to a *P2P platform operator* facilitating a *regulated mortgage contract*, *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* is a reference to the platform facilitating *persons* becoming the lender and borrower, *home purchase provider* and *home purchaser*, *reversion provider* and *reversion occupier*, or agreement provider and agreement seller under an agreement which comprises that transaction; and
 - (2) a reference to a *regulated mortgage contract* that is facilitated by a *P2P platform operator* excludes a *CBTL credit agreement*.

1.2.25

G

■ MCOB 15 contains *rules* and *guidance* that apply in relation to *regulated mortgage contracts* and other *home finance transactions* facilitated by *P2P platform operators*. It includes *rules* that disapply other parts of *MCOB* that

1

would otherwise apply by virtue of ■ MCOB 1.2.22R(1) or ■ 1.2.22R(2), and *rules* that apply or modify the application of certain other *MCOB* provisions in such circumstances. ■ MCOB 15 also includes *guidance* that will be relevant to such a *P2P platform operator* whether or not a lender or provider falls within the definition of a *mortgage lender, home purchase provider, reversion provider or SRB agreement provider*.



1.3 General application: where?

Location of the customer

1.3.1 **R** Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; or
- (2) another *EEA State* where the activity is carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;

at the time that the *home finance activity* is carried on.

1.3.1A **R** (1) The provisions of *MCOB* listed in **■ MCOB 1.3.1AR(2)** apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.

- (2) The provisions mentioned in **■ MCOB 1.3.1AR(1)** are:
 - (a) **■ MCOB 2A.1.1R(2)**;
 - (b) **■ MCOB 2A.1.4R**;
 - (c) **■ MCOB 2A.2.1R** and **■ 2A.2.2G**; and
 - (d) **■ MCOB 7.6.28R**.

[Note: article 34(2) of the *MCD*]

Incoming EEA credit intermediaries

1.3.1B **R** (1) The application of *MCOB* to an *incoming EEA firm* that is an *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.

- (2) **■ MCOB 1.3.1BR(1)** overrides every other *rule* in this sourcebook.

[Note: article 34 of the *MCD*]

1.3.1C **G** Guidance on **■ MCOB 1.3.1AR** and **■ MCOB 1.3.1BR** is in **■ MCOB 1 Annex 5**. For applicable rules in relation to knowledge and competence requirements for staff, *incoming EEA firms* should also refer to **■ TC 2.1.5AR** to **■ TC 2.1.5FG** and to the territorial application rules in **■ TC Appendices 1** and **■ 2**.

Financial Promotion

- 1.3.2 **R** The territorial scope of **■ MCOB 3A** Financial promotions and communications with customers) is set out in MCOB 3A.1.13R to MCOB 3A.1.16R (Territorial scope and Exceptions to territorial scope), rather than in this section.

Electronic commerce activities and communications

- 1.3.3 **R** This sourcebook does not apply to an *incoming ECA provider* acting as such.

Distance contracts entered into from an establishment in another EEA State

- 1.3.4 **R**
- (1) The *rules* in (2) do not apply to a *firm* with respect to a *regulated mortgage activity* or a *home purchase activity* exclusively concerning a *distance contract* if the following conditions are satisfied:
 - (a) the *firm* carries on the activity from an establishment maintained by the *firm* in an *EEA State* other than the *United Kingdom*; and
 - (b) either the *EEA State*:
 - (i) has implemented the *Distance Marketing Directive*; or
 - (ii) has obligations in its domestic law corresponding to those provided for by the *Distance Marketing Directive*;
 and, in either case, with the result that the obligations provided for by the *Distance Marketing Directive* (or corresponding obligations) are applied by that State when the *firm* carries on that activity; and
 - (c) the *firm* is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.
 - (2) The *rules* which do not apply are:
 - (a) initial disclosure requirements in **■ MCOB 4.4A** (in respect of *regulated mortgage contracts*) and **■ MCOB 4.10** (in respect of *home purchase plans*);
 - (b) **■ MCOB 4.5** (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with *consumers*);
 - (c) **■ MCOB 4.6** (Cancellation of distance mortgage mediation contracts) and distance home purchase mediation contracts);
 - (d) **■ MCOB 5** (Pre-application disclosure);
 - (e) **■ MCOB 6** (Disclosure at offer stage);
 - (f) **■ MCOB 7.6.7 R** to **■ MCOB 7.6.17 R** (Further advances);
 - (g) **■ MCOB 8.3** (Application of rules in **■ MCOB 4**) to the extent that it applies **■ MCOB 4.4A** to **■ MCOB 4.6**;
 - (h) [deleted]
 - (i) **■ MCOB 9.3** (Pre-application disclosure);
 - (j) **■ MCOB 9.4** (Content of illustrations); and
 - (k) **■ MCOB 9.5** (Disclosure at offer stage for equity release transactions).

Distance contracts with retail customers

1.3.5

G

Parts of *MCOB* relate to *distance contracts* (or *distance mortgage mediation contracts* and *distance home purchase mediation contracts*) with consumers. These expressions are derived from the *Distance Marketing Directive*, and the following paragraphs provide some *guidance* to *firms* on their meaning:

(1) *consumer*

The *Distance Marketing Directive* applies for *distance contracts* with 'any natural person who is acting for purposes which are outside his trade, business or profession', for which the term '*consumer*' has been adopted. Examples of individuals who would be regarded as *consumers* include:

- (a) personal representatives, including executors, unless they are acting in a professional capacity, for example a solicitor acting as executor; or
- (b) private individuals acting in personal or other family circumstances, for example, a trustee of a family trust.

(2) *Distance contract*

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded. So:

- (a) the *firm* must have put in place facilities designed to enable a *customer* to deal with it exclusively at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet. If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the *Distance Marketing Directive* will not apply. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*; and
- (b) there must have been no simultaneous physical presence of the *firm* and the other party to the contract throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the Internet, through a telemarketing operation, or by post will normally be *distance contracts*.

Use of intermediaries

1.3.6

G

The mere fact that an intermediary (acting for the supplier or for the *consumer*) is involved, does not make the sale of a financial product or service a *distance contract*. There will not be a *distance contract* if there has been simultaneous physical presence of the intermediary and the *consumer* at some stage in the offer, negotiation and conclusion of the contract.

1.5 Application to appointed representatives

1.5.1

G

- (1) Although *MCOB* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *MCOB*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).
- (2) *Firms* should refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.



1.6 Distinguishing regulated mortgage contracts and regulated credit agreements

1.6.1 **G** *MCOB applies to regulated mortgage contracts. For certain categories of regulated mortgage contract, MCOB applies from the dates mentioned in ■ MCOB 1.2.21G. A credit agreement secured on land that is not a regulated mortgage contract, for example because the borrower is not an individual or a trustee, may be a regulated credit agreement to which the CCA and CONC apply (see ■ CONC 1.2.7G).*

1.6.2 **G** *Principle 2 requires a firm to conduct its business with due skill, care and diligence. The purpose of ■ MCOB 1.6.3 R is to reinforce this. The FCA would expect firms to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to FCA regulation and, if so, whether it is a regulated mortgage contract or a regulated credit agreement.*

1.6.3 **R** *Before a firm enters into a mortgage, it must take all reasonable steps to establish whether that mortgage will be a regulated mortgage contract and therefore subject to MCOB.*

1.6.4 **R** *If, notwithstanding the steps taken by a firm to comply with ■ MCOB 1.6.3 R, it transpires that a mortgage which the firm has treated as unregulated or as a regulated credit agreement is in fact a regulated mortgage contract, the firm must as soon as practicable after the correct status of the mortgage has been established:*

(1) *contact the customer and provide him with the following information in a durable medium:*

(a) *a statement that the mortgage contract is a regulated mortgage contract ; and*

(b) (i) *where the firm has treated the mortgage as unregulated, a statement that the mortgage contract is subject to FCA regulation, stating in particular the position with regard to redress and compensation; or*

(ii) *where the firm has treated the mortgage as a regulated credit agreement, a statement that;*

(A) (A) *neither the CCA nor CONC will apply to the mortgage contract;*

1.6.5

G

- (B) (B) any rights or requirements arising under the CCA or CONC set out in previous communications will not apply; and
 - (C) (C) MCOB will apply to the mortgage contract.
- (2) apply to the *regulated mortgage contract* all relevant MCOB requirements, such as those on disclosure (in ■ MCOB 7) or on the treatment of *customers in arrears* (in ■ MCOB 13).
- (1) ■ MCOB 1.6.4 R(2) means, for example, that if a *firm* discovered immediately after completion that a loan was a *regulated mortgage contract*, the *firm* would be required to comply with ■ MCOB 7.4 (Disclosure at the start of the contract).
- (2) Although ■ MCOB 1.6.4 R recognises that *firms* may become aware that a mortgage is a *regulated mortgage contract* at a late stage, the FCA expects this to be an extremely rare occurrence. It could arise, for example, if a *firm* has acted on the understanding, verified as far as was practicable, that in respect of a particular mortgage contract less than 40% of the land would be used in connection with a dwelling. If it was discovered later that more than 40% of the land was used in connection with the dwelling (and provided that all the other legal requirements were met) the mortgage will be a *regulated mortgage contract* to which MCOB applies.
- (3) ■ MCOB 1.6.3 R and ■ MCOB 1.6.4 R do not override the application of MCOB to any *regulated mortgage contract*. MCOB applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated or is a *regulated credit agreement*. In deciding whether to take disciplinary action as a result of a breach of MCOB, the FCA will take into account whether the action by the *firm* was reckless or deliberate (see ■ DEPP 6.2.1G (1)(a)).

[deleted]

[deleted]

[deleted]

[deleted]

Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State

Under article 34(1) of the *MCD*, the *Home State* is responsible for supervising the activities of *MCD credit intermediaries* providing *cross border services*. If a *UK firm* provides services into another *EEA State*, the rules applying to *MCD credit intermediation activities* therefore apply to it. For an *incoming EEA firm* providing *cross border services*, rules do not apply to the *firm* where the rule covers a matter dealt with by the *MCD*. Instead the *Home State's* rules will apply.

Under article 34(2) of the *MCD*, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the *MCD* by *incoming EEA firms* doing business through branches is the responsibility of the *Host State*. These articles contain most of the conduct requirements imposed on *credit intermediaries* under the *MCD*, for example advisory standards and the obligation to provide an *ESIS*. Responsibility for ensuring compliance with all other obligations in the *MCD* is the responsibility of the *Home State*. This means that, in so far as a rule imposes obligations on *MCD credit intermediaries* that are contained in the articles listed above, that rule applies to *incoming EEA firms* doing business through branches. A rule that imposes obligations contained in any other article of the *MCD* does not apply in relation to such an *incoming EEA firm*, and its equivalent *Home State* rule applies instead. Conversely, such a rule would apply in relation to an *EEA branch* of a *UK firm*. For all *incoming EEA firms*, where *MCOB* imposes obligations that go beyond what is required by the *MCD* (as permitted under article 2 of the *MCD*), the *firm* is required to comply with those additional obligations.

The tables in ■ MCOB 1 Annex 5.1.6G provide non-exhaustive guidance as to how the obligations imposed under the *MCD* relate to *MCOB* provisions. In general, *MCOB* applies as follows:

- (1) In relation to an *incoming EEA firm* acting as an *MCD credit intermediary* on a branch basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Table 2.
- (2) In relation to an *incoming EEA firm* acting as an *MCD credit intermediary* on a *cross-border services* basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Tables 1 and 2.
- (3) In relation to an *EEA branch* of a *UK firm* acting as an *MCD credit intermediary*, the provisions in Table 2 (and only those provisions) may apply in relation to the *firm's MCD credit intermediation activity* in that *EEA State*.

Incoming EEA firms should also refer to the general application provisions in ■ MCOB 1.3 and the application provisions in each chapter of *MCOB*, which set out how *MCOB* applies to *MCD credit intermediaries* in general.

Tables 1 and 2 belong to ■ MCOB 1 Annex 5.1.4G.

Table 1: MCOB provisions relating to MCD obligations that apply to MCD credit intermediaries, for which Host State rules apply in relation to an incoming EEA firm doing business through branches

MCD article	Description	MCOB provisions
7(1)	Obligation to act honestly, fairly, transparently and professionally in the interests of consumers.	MCOB 2.5A.1R

MCD article	Description	MCOB provisions
8	Obligation to provide information free of charge to consumers.	MCOB 2A.6
10	General provisions applicable to advertising and marketing (obligation to require communications are fair, clear and not misleading).	MCOB 3A.2
11	Standard information to be included in advertising.	MCOB 3A.5
13	General information (to be made available about credit agreements).	MCOB 3B
14	Pre-contractual information.	MCOB 5A
15	Information requirements concerning credit intermediaries and appointed representatives.	MCOB 4.4A.4R, 4.4A.8R, 4.4A.9R, 4.4A.12R and 4A.1
16	Adequate explanations.	MCOB 4A.2
17	Calculation of the <i>APRC</i> .	MCOB 10A
20	Disclosure and verification of consumer information.	MCOB 11A.1 and 11A.3
22	Standards for advisory services.	MCOB 4A.3, 4.4A.4R(1)(a) and (3), MCOB 4.4A.9R, 4.4A.12R and MCOB 4.7A

Table 2: MCOB provisions relating to MCD obligations that apply to MCD credit intermediaries, for which Home State rules apply in relation to all incoming EEA firms

MCD article	Description	MCOB provisions
7(2) – (4)	Remuneration not impeding obligation to act honestly, fairly, transparently and professionally in the interests of consumers, or in the consumer’s best interests when giving advice.	MCOB 2A.1.1R(2) and MCOB 2A.1.4R
12	Tying and bundling practices.	MCOB 2A.2.1R and 2A.2.2G
27	Information on changes in the borrowing rate.	MCOB 7.6.28R