

# Professional firms

## Professional firms

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# Chapter 1

## Professional firms

## 1.1 Application and Purpose

### Application

- 1.1.1 **R** This sourcebook applies as follows:
- (1) ■ PROF 1 to ■ PROF 4 apply to *exempt professional firms*;
  - (2) ■ PROF 5 applies to *authorised professional firms*; and
  - (3) [deleted]
  - (4) PROF 7 applies to every *designated professional body* and every *exempt professional firm* that is carrying on, or proposing to carry on, *insurance distribution activity*.

- 1.1.1A **R** This sourcebook does not apply to an *incoming ECA provider* acting as such.

- 1.1.2 **G** This sourcebook is also relevant to *designated professional bodies*.

### Purpose

- 1.1.3 **G** Under Part XX of the Act (Provision of Financial Services by Members of the Professions) certain individuals, partnerships or corporate entities, known as *exempt professional firms*, can carry on particular *regulated activities* (which the Act terms *exempt regulated activities*) under supervision and regulation by *designated professional bodies*.

- 1.1.4 **G** This sourcebook outlines:
- (1) the arrangements for designation of professional bodies;
  - (2) the conditions for activities to be treated as *exempt regulated activities* (see ■ PROF 2.1.3 G);
  - (3) the FCA's duty to keep itself informed about how *designated professional bodies* supervise and regulate the *exempt regulated activities* of *exempt professional firms* and how *exempt professional firms* carry on *exempt regulated activities*;
  - (4) the FCA's power under section 328 of the Act (Directions in relation to the general prohibition) to make a direction to deny the exemption to different classes of *person* or to different descriptions of *regulated activity*;

- (5) the implications for an *authorised professional firm* that carries on an *non-mainstream regulated activities*; and
- (6) the arrangements made by the *FCA* for complying with its obligations under the *IDD* in relation to:
  - (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; and
  - (b) *exempt professional firms* that wish to passport under the *IDD*.

**1.1.5** **G** This sourcebook also contains disclosure *rules* made by the *FCA* under the power conferred by section 332(1) of the *Act* (Rules in relation to persons to whom the general prohibition does not apply). These *rules* apply to *exempt professional firms* for the purpose of ensuring that their *clients* are made aware that *exempt professional firms* are not *authorised persons*.

**1.1.6** **G** The *rules* and *guidance* in this sourcebook are intended to:

- (1) assist the protection of *clients* of *exempt professional firms* by ensuring that the *FCA* has information which allows it to keep under review the exercise of the direction power under section 328 of the *Act* (see ■ PROF 1.1.4 G (4));
- (2) secure an appropriate degree of protection for *consumers* by ensuring that the *clients* of an *exempt professional firm* are made aware that the firm is not an *authorised person*;
- (3) enable the *FCA* to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under 325 of the *Act* (*FCA's* general duty); and
- (4) explain the background to and the arrangements made by the *FCA* for:
  - (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; and
  - (b) *authorised professional firms* and *exempt professional firms* that wish to exercise their *EEA right* under the *IDD* to establish a *branch* or provide *cross border services* in another *EEA State*.

**1.1.7** **G** *Professional firms* should refer to ■ PERG 8 (Financial promotion and related activities) for general *guidance* on financial promotion and to ■ PERG 8.15 (Financial promotions by members of the professions (articles 55 and 55A)) for *guidance* on the exemptions which are specifically intended for *professional firms*.





## Chapter 2

# Status of exempt professional firm

## 2.1 Designated professional bodies and exempt regulated activities

### Designated professional bodies

2.1.1 **G** The Treasury designates professional bodies. Section 326 of the Act (Designation of professional bodies) sets out the conditions a body must satisfy before it can be designated.

2.1.2 **G** The professional bodies that have been designated by the Treasury are listed in ■ PROF 2 Annex 1 G.

### Exempt regulated activities

2.1.3 **G** Section 327 of the Act (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The FCA's approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ■ EG 12.

2.1.4 **G** If the FCA has made a direction under section 328 of the Act (Directions in relation to the general prohibition) (see ■ PROF 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the Act (Orders in relation to the general prohibition) gives the FCA power to make an order disapplying the Part XX exemption from a *person* named in the Order. The FCA's general approach to the use of this power is explained in ■ EG 16.

2.1.5 **G** Section 327(2) provides that an *exempt professional firm* must be a *member* of a profession or be controlled or managed by one or more *members*. The FCA considers that "managed" here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant *person*.

2.1.6 **G** The effect of section 327(7) of the Act is that an *exempt professional firm* can carry on *regulated activities* in that capacity or as an *exempt person* but

not otherwise. Therefore, an *exempt professional firm* cannot be an *authorised person*.

- 2.1.7** G The *Act* does not, however, prevent an *exempt professional firm* from carrying on, in addition to *exempt regulated activities*, any *regulated activities* in relation to which it is an *exempt person*. For example, it is possible for an *exempt professional firm* to carry on *regulated activities* as an *appointed representative*.
- 2.1.8** G Section 327 also sets out the conditions which determine the particular *regulated activities* an *exempt professional firm* may carry on.
- 2.1.9** G Section 327(6) of the *Act* gives the Treasury power to make an order specifying activities, or activities relating to specified *investments*, that a *person* cannot carry on as an *exempt professional firm*. The relevant orders are listed in ■ PROF 2 Annex 2 G.
- 2.1.10** G Section 332(3) of the *Act* requires a *designated professional body* to make rules that define the particular *regulated activities* which its *members* are allowed to carry on. Section 332(4) of the *Act* provides that those rules must be designed to secure that, in providing a particular professional service to a particular *client*, a *member* must carry on only *regulated activities* which arise out of, or are complementary to, the provision by the *member* of that professional service to the *client*.
- 2.1.11** G The *FCA* is required to approve the rules *designated professional bodies* make under section 332(3) of the *Act*. These rules must be in place in order to allow a *person* to be an *exempt professional firm*. They add to the other conditions within section 327 but do not override them, and a firm may need to refer to section 327 if it is in doubt whether an activity is an *exempt regulated activity*.
- 2.1.12** G Section 327(3) deals with the treatment by a firm of a pecuniary reward or other advantage received from anyone other than the firm's *client*. For a *regulated activity* to be treated as an *exempt regulated activity*, the firm must account to its *client* for any such receipt. The *FCA* considers this to mean that an *exempt professional firm* must hold to the order of its *client* any such reward or other advantage that it receives.
- 2.1.13** G Section 327(4) states that the manner of the provision of any service in the course of carrying on *regulated activities* must be incidental to the provision by the *exempt professional firm* of professional services. For this purpose, professional services are services which do not constitute carrying on a *regulated activity*, and the provision of which is supervised and regulated by a *designated professional body*.
- 2.1.14** G The *FCA* considers that to satisfy the condition in section 327(4) *regulated activities* cannot be a major part of the practice of the firm. The *FCA* also considers the following further factors to be among those that are relevant:

- (1) the scale of *regulated activity* in proportion to other professional services provided;
- (2) whether and to what extent activities that are *regulated activities* are held out as separate services; and
- (3) the impression given of how the firm provides *regulated activities*, for example through its advertising or other promotions of its services.

**2.1.15** **G** The FCA's view is that, in the context of section 327 as an exemption from the *general prohibition*, the conditions in section 327 should be interpreted as not imposing any restriction on the *regulated activities* that an *exempt professional firm* may carry on outside the *United Kingdom*. For further guidance on when a *regulated activity* is carried on 'in the *United Kingdom*', *exempt professional firms* are referred to section 418 of the *Act* and the guidance in ■ PERG 2.4 (Link between activities and the United Kingdom).

**2.1.16** **G**

- (1) An *exempt professional firm* providing a service which is an *investment service* is required to do so in accordance with article 4 of the *MiFID Org Regulation*.
- (2) In the FCA's view, ■ PROF 2.1.14G is also relevant for these purposes as well as the approach to disclosure described in ■ PROF 4.1.4G, noting that article 4(c) of the *MiFID Org Regulation* imposes a disclosure obligation when an *exempt professional firm* markets or otherwise promotes its ability to provide *investment services*.

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## Status of exempt professional firm G

On 28 March 2001 the following professional bodies were designated by the Treasury under section 326(1) of the Act:

the Law Society of England & Wales

the Law Society of Scotland

the Law Society of Northern Ireland

the Institute of Chartered Accountants in England and Wales

the Institute of Chartered Accountants of Scotland

the Institute of Chartered Accountants in Ireland

the Association of Chartered Certified Accountants

the Institute of Actuaries.

On 14 January 2005, the Council for Licensed Conveyancers was designated by the Treasury under section 326(1) of the Act.

On 10 February 2006, the Royal Institution of Chartered Surveyors was designated by the Treasury under section 326(1) of the Act.



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## Status of exempt professional firm G

### Non Exempt activities orders under section 327(6) of the Act (see ■ PROF 2.1.9 G)

As at 31 October 2004, the Treasury had made the following orders under section 327(6):

The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227), as amended by: article 3 of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); article 7 of the Financial Services and Markets Act 2000 (Regulated activities) (Amendment) Order 2002 (SI 2002/682); article 3 of the Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (SI 2002/1777); article 24 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 1) Order 2003 (SI 2003/1475), and article 16 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476).





## Chapter 3

# The FCA's duties and powers

### 3.1 The FCA's duty to keep itself informed

3.1.1 **G** 325 of the *Act* (Authority's general duty) imposes on the *FCA* a duty to keep itself informed about:

- (1) the way in which *designated professional bodies* supervise and regulate the carrying on of *exempt regulated activities* by *exempt professional firms*; and
- (2) the way in which *exempt professional firms* carry on *exempt regulated activities*.

3.1.2 **G** The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct *insurance distribution activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:

- (1) complaints and redress arrangements;
- (2) complaints volumes and their analysis;
- (3) disciplinary action;
- (4) supervisory activity;
- (5) the activities carried on by *exempt professional firms*, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements; and
- (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, *insurance distribution activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the *insurance distribution activity* and, where relevant, the passporting information required by the *FCA* for the purposes of paragraph 25 of Schedule 3 to the *Act* (EEA Passport Rights).

3.1.3 **G** Information may also be obtained from *exempt professional firms*, government departments, trade bodies, consumer organisations and *clients* of *exempt professional firms*. The *FCA* may also commission or carry out

reviews of the supervisory and regulatory activities of a *designated professional body* and commission or carry out research about, or surveys of, *exempt professional firms* or their *clients*.

## 3.2 The FCA's power to make a direction

- 3.2.1** **G** Section 328 of the *Act* (Directions in relation to the general prohibition) gives the *FCA* power to make a direction that the exemption under section 327 of the *Act* (see **■ PROF 2.1.3 G**) does not apply to the extent specified in the direction. Section 328 allows the *FCA* to make a direction in relation to different classes of *person* or different descriptions of *regulated activity*. Section 325(3) of the *Act* requires the *FCA* to keep under review the desirability of exercising its powers under Part XX of the *Act* (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the *Act*.
- 3.2.2** **G** If the *FCA* gives a direction in relation to specified classes of *person*, then any *person* within those classes may be in contravention of the *general prohibition* unless:
- (1) it ceases to carry on *regulated activities*; or
  - (2) it is an *authorised person*; or
  - (3) it is an *exempt person*.
- 3.2.3** **G** A direction might also cover classes of *persons* who are *members* of different *designated professional bodies*.
- 3.2.4** **G** Were the *FCA* to give a direction in relation to a description of *regulated activity* (for example, *dealing in investments as agent*), then that activity could no longer be carried on within the terms of the exemption.
- 3.2.5** **G**
- (1) The *FCA* may exercise its direction powers under section 328(6) of the *Act* in two situations, as set out in (2) and (3).
  - (2) First, the *FCA* may exercise its direction power under section 328(6)(a) of the *Act* if it is satisfied that it is desirable in order to protect the interests of *clients*. In considering whether it is satisfied, the *FCA* is required by section 328(7) of the *Act* to have regard, among other things, to the effectiveness of any arrangements made by a *designated professional body*:
    - (a) for securing compliance with *rules* made under section 332(1) of the *Act* (see **■ PROF 4.1.1 G**);

- (b) for dealing with complaints against its *members* in relation to the carrying on by them of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d));
- (c) in order to offer redress to *clients* who suffer, or claim to have suffered, loss as a result of misconduct by its *members* in their carrying on of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d)); and
- (d) for cooperating with the *FCA* under section 325(4) of the *Act* (see ■ PROF 3.1.2 G).

(3) Second, the *FCA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the *IDD*. For example, the *FCA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *Financial Services Register* (see PROF 7.1).

**3.2.6**

**G** Section 330 of the *Act* (Consultation) sets out procedures which the *FCA* must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

- (1) the *FCA* must consult publicly on its proposed direction;
- (2) the *FCA* must have regard to any representations made in response to the consultation; and
- (3) if the *FCA* then gives the proposed direction, it must publish an account of the representations made and its response to them.

**3.2.7**

**G** The directions the *FCA* has made under section 328 (6)(a) are set out in ■ PROF 3 Annex 1 G. Directions made by the *FCA* under section 328(6)(b) of the *Act* are listed in ■ PROF 3 Annex 2 G (The *FCA*'s duties and powers).



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## The FCA's duties and powers

### **Directions made by the FCA under section 328(6)(a) of the Act (see ■ PROF 3.2.7 G)**

The FCA has made no directions under section 328(6)(a) of the Act.





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## The FCA's duties and powers

### **Directions made by the FCA under section 328(6)(b) of the Act (see ■ PROF 3.2.7 G)**

The *FCA* has made no directions under section 328(6)(b) of the *Act*.



# Chapter 4

# Disclosure

## 4.1 Disclosure rules

- 4.1.1** **G** The effectiveness of arrangements made by a *designated professional body* for securing compliance with the *rules* in this chapter is one of the factors that the *FCA* must take into account in considering whether to exercise its powers to give a direction under section 328 of the *Act* (see ■ PROF 3.2.5 G (2) and ■ PROF 3.2.5 G (3)).
- 4.1.2** **R** An *exempt professional firm* must avoid making any representation to a *client* that:
- (1) it is authorised under the *Act* or regulated by the *FCA*; or
  - (2) the regulatory protections provided by or under the *Act* to a *person* using the services of an *authorised person* are available.
- 4.1.3** **R**
- (1) An *exempt professional firm* must, before it provides a service which includes the carrying on of a *regulated activity* in the *United Kingdom*, other than an *insurance distribution activity*, with or for a *client*, disclose in writing to the *client* in a manner that is clear, fair and not misleading that it is not authorised under the *Act*.
  - (2) An *exempt professional firm*, must, before it provides a service which includes the carrying on of an *insurance distribution activity* with or for a *client*, make the following statement in writing to the *client* in a way that is clear, fair and not misleading and no less prominent than any other information provided to the *client* at the same time:
 

"[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by [DPB]. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register)."
- 4.1.4** **G**
- (1) The *FCA* considers that material provided to satisfy ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) need not be tailored to the individual *client*. The disclosures in ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) may be provided alongside or integrated with other material provided to a *client*. *Exempt professional firms* may therefore include the information within engagement letters or client care letters, if they wish.

- (2) The FCA considers that it is important that *clients* understand the implications for them of receiving services from an *exempt professional firm* that is not authorised under the Act. It is also important that *clients* understand the implications of the difference between authorisation under the Act and being on the register maintained by the FCA, so that the *exempt professional firm* can conduct *insurance distribution activity*, in relation to which activity the regulatory protections established by the Act for the benefit of *consumers* will not apply. The FCA therefore expects *designated professional bodies* to make rules covering the information to be provided to *clients*. These rules should require *exempt professional firms* to make a disclosure to *clients* containing the following elements:
- (a) where the *exempt professional firm* conducts a *regulated activity* other than an *insurance distribution activity*, a statement that the *exempt professional firm* is not an *authorised person*;
  - (b) the nature of the *regulated activities* carried on by the *exempt professional firm*, and the fact that they are limited in scope;
  - (c) a statement that the *exempt professional firm* is regulated for these *regulated activities* by the *exempt professional firm's designated professional body*, identifying the *designated professional body* concerned;
  - (d) the nature of the complaints and redress mechanisms available to *clients* in respect of these *regulated activities*; and
  - (e) where the *regulated activity* consists of *insurance distribution activity*, the statement contained at ■ PROF 4.1.3 R (2).
- (3) *Exempt professional firms* should also ensure that any statement that makes reference to the FCA does not lead a *client* to suppose that the FCA has direct regulatory responsibility for the *exempt professional firm*. This could be a breach of ■ PROF 4.1.2 R. This consideration is particularly important in relation to *insurance distribution activity*, where *clients* may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FCA so as to permit the *exempt professional firm* to carry on *insurance distribution activity*.

## 4.1.5

**G** For further guidance on when a *regulated activity* is carried on 'in the United Kingdom', *exempt professional firms* are referred to section 418 of the Act and the guidance in ■ PERG 2.4.



# Chapter 5

## Non-mainstream regulated activities

## 5.1 Application and purpose

### Application

- 5.1.1 **R** This chapter applies to an *authorised professional firm* that carries on *non-mainstream regulated activities*.

### Purpose

- 5.1.2 **G** This chapter:
- (1) contrasts "*exempt regulated activities*" with "*non-mainstream regulated activities*";
  - (2) sets out the conditions which must be satisfied for a *regulated activity* of an *authorised professional firm* to constitute a *non-mainstream regulated activity*;
  - (3) refers to other parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities*;
  - (4) gives effect to the *Distance Marketing Regulations* with respect to the *non-mainstream regulated activities* of *authorised professional firms*.

### Exempt regulated activities contrasted with non-mainstream regulated activities

- 5.1.3 **G**
- (1) The *FCA's* policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities.
  - (2) Subject to conditions (see **PROF 2**), members of *designated professional bodies* that are not authorised can carry on particular *regulated activities*, known as *exempt regulated activities*, and obtain the benefit of the exemption under section 327 of the *Act* from the *general prohibition*.
  - (3) In contrast, *non-mainstream regulated activities* are particular *regulated activities* carried on by an *authorised professional firm*. If the *professional firm* were not authorised under the *Act*, these same activities would be *exempt regulated activities* which, if the *firm* could meet the necessary conditions in section 327, would enable it to benefit from the section 327 exemption.



(4) Therefore, a number of provisions of the *Handbook* (see ■ PROF 5.3) have been disapplied or modified in respect of these *non-mainstream regulated activities of authorised professional firms*.

**5.1.4**

**G**

A "*non-mainstream regulated activity*" is defined in the *Glossary* as "a regulated activity of an authorised professional firm in relation to which the conditions in ■ PROF 5.2.1 R are satisfied". Conditions (1) to (6) of ■ PROF 5.2.1 R replicate section 327(1)(b)(i), (3), (4), (5) and (6) of the *Act*, as if those conditions applied to an *authorised professional firm*.

## 5.2 Nature of non-mainstream regulated activities

### Conditions for non-mainstream regulated activity

5.2.1 **R** A "non-mainstream regulated activity" is a regulated activity of an authorised professional firm in relation to which the following conditions are satisfied:

- (1) the *firm* must not receive from a *person* other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of the carrying on of the *regulated activity*;
- (2) the manner of the provision by the *firm* of any service in the course of carrying on the *regulated activity* must be incidental to the provision by it of professional services (see ■ PROF 5.2.2 R);
- (3) the *regulated activity* must not be of a description, or relate to an investment of a description, specified in The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) or in any other order made by the Treasury under section 327(6) of the Act (see ■ PROF 2 Annex 2 GG);
- (4) there must not be in force any direction under section 328 of the Act (Directions in relation to the general prohibition) in relation to:
  - (a) a class of *person* which would have included the *firm* were it not an *authorised person*; or
  - (b) a description of *regulated activity* which includes the *regulated activity* the *firm* proposes to carry on;
- (5) the *regulated activity* must be an activity which *exempt professional firms* which are *members* of the same *designated professional body* as the *authorised professional firm* are permitted to carry on under rules made by that body as required by section 332(3) of the Act; and
- (6) the *authorised professional firm* is subject to the rules referred to in (5).

5.2.1A **R** [deleted]

5.2.2 **R** In ■ PROF 5.2.1 R (2), "professional services" means services:

- (1) which do not constitute a *regulated activity*; and

- 
- (2) the provision of which is supervised and regulated by a *designated professional body*.

## 5.3 Reference to other sourcebooks and manuals

### Introduction

- 5.3.1 **G** The parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities* include those described in ■ PROF 5.3.1A G to ■ PROF 5.3.9 G

### General provisions

- 5.3.1A **G** ■ 4.3.5 R provides that ■ 4.3.1 R (Disclosure in letters to private customers) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

### Conduct of Business sourcebook

- 5.3.2 **G** ■ COBS 18.11 provides that *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:
- (1) the *fair, clear and not misleading rule*;
  - (1A) the *financial promotion rules*, but only in limited circumstances;
  - (2) (where these are *insurance distribution activities*) the parts of *COBS* set out in ■ COBS 18.11.2R(3)(a) to (i) which implement the *IDD* apply unless:
    - (a) the *designated professional body* of the *firm* has made rules which implement some or all of articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD*;
    - (b) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
    - (c) the *firm* is subject to the rules in the form in which they were approved;
  - (3) ■ COBS 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest; and
  - (4) ■ COBS 5.2 (E-commerce).

### Training and Competence sourcebook

- 5.3.3 **G** ■ TC Appendix 3 provides that *TC*, which imposes the substantive training and competence requirements for *retail clients* or *customers*, does not apply to

an authorised professional firm with respect to its non-mainstream regulated activities.

**Senior Management Arrangements, Systems and Controls**

5.3.4 **G** The following provisions do not apply to authorised professional firms when carrying on non-mainstream regulated activities:

- (1) ■ SYSC 6.3 (Financial crime), in relation to money laundering;
- (2) ■ SYSC 10.1 (Application), in relation to conflicts of interest;
- (3) ■ SYSC 10.2 (Chinese walls);
- (4) ■ SYSC 19F.2 (IDD remuneration incentives) where the designated professional body of the firm has made rules, approved by the FCA, that implement article 17(3) of the IDD and that apply to the firm; and
- (5) ■ SYSC 28.2 ((Knowledge and ability requirements) except ■ SYSC 28.2.1R(1)).

**Supervision manual**

5.3.5 **G** ■ SUP 10A.1.17 R provides that ■ SUP 10A (Approved persons) does not apply (except in respect of the required functions) to an authorised professional firm in respect of its non-mainstream regulated activities. So a person such as a partner, whose only regulated activities are incidental to his professional services, in an authorised professional firm whose principal purpose is to carry on activities other than regulated activities, need not be an approved person.

**Dispute resolution: Complaints sourcebook**

5.3.6 **G** ■ DISP 1.1.5R (3) provides that ■ DISP 1 (Treating complainants fairly) only applies to an authorised professional firm in so far as its mainstream regulated activities are concerned. ■ DISP 2.3.4 R further provides that a complaint about an authorised professional firm cannot be handled under the Compulsory Jurisdiction of the Financial Ombudsman Service if it relates solely to non-mainstream regulated activity and can be handled by a designated professional body. This is because such a complaint will be handled by the relevant professional body.

**Market Conduct sourcebook**

5.3.7 **G** ■ MAR 4.4.1 R (3) provides that ■ MAR 4, which deals with the endorsement of the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares, does not have effect in relation to an authorised professional firm in respect of non-mainstream regulated activity.

**Mortgages: Conduct of business sourcebook**

5.3.8 **G** ■ MCOB 1.2.10 R provides that 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).

### Client Assets

5.3.9

G

■ CASS 1.2.4 R provides that with the exception of ■ CASS 1 and the *insurance client money chapter*, CASS does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. ■ CASS 1.2.5 R further provides that if the *non-mainstream regulated activities* are *insurance distribution activity*, ■ CASS 5 (the *insurance client money chapter*) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which implement the *IDD* and which are in the form approved by the *FCA* under section 332(5) of the *Act*.

### Insurance: Conduct of Business sourcebook

5.3.10

G

(1) *ICOBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see ■ *ICOBS 1 Annex 1*, Part 1, paragraph 3.1R, except for:

(a) the provisions on communications to *clients* and *financial promotions* (■ *ICOBS 2.2*);

(b) the e-commerce provisions (■ *ICOBS 3.2*);

(c) status disclosure requirements in relation to complaints procedures (■ *ICOBS 4.1*); and

(d) provisions in *ICOBS* which implement articles 1(4), 17, 18, 19, 20, 23, and 24 of the *IDD* (see ■ *ICOBS 2.2.2R* (communication to customers and financial promotions), ■ *ICOBS 2.2.2AR* (marketing communications), ■ *ICOBS 2.5.-1R* (the customer's best interests rule), ■ *ICOBS 2.6* (Distribution of connected contracts through exempt persons), ■ *ICOBS 4.1* (Information about the firm, its services and remuneration), ■ *ICOBS 4.1A* (Means of communicating to customers), ■ *ICOBS 4.3* (remuneration disclosure), ■ *ICOBS 5.2* (Demands and needs), ■ *ICOBS 5.3.3R* (Advice on the basis of a fair analysis), ■ *ICOBS 5.3.4R* (Personalised explanation), ■ *ICOBS 6A.1.4R* (Ensuring the customer can make an informed decision) and ■ *ICOBS 6A.3* (Cross-selling)), except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA*.

(2) [deleted]



## 5.4 Application of the Distance Marketing Regulations

### 5.4.1

**R**

- (1) In addition to those provisions of the *Distance Marketing Regulations* which apply directly, an *authorised professional firm* must, with respect to its *non-mainstream regulated activities*, comply with regulations 7 to 11 and 15 of the *Distance Marketing Regulations*. Those regulations have effect to cancel *distance contracts* the making or performance of which by such *firms* constitutes a *non-mainstream regulated activity*.
- (2) Paragraph (1) does not apply in relation to regulations 7 to 8 and 15 if the *designated professional body* of the *authorised professional firm* has rules equivalent to some or all of those regulations and:
  - (a) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
  - (b) the *authorised professional firm* is subject to those rules in the form in which they have been approved;in which case those regulations are disapplied to the extent that they are implemented by the rules of the *designated professional body*.

### 5.4.2

**G**

The effect of ■ PROF 5.4.1 R is that it allows *designated professional bodies* to make rules which allow an *authorised professional firm* to comply with the *Distance Marketing Regulations* in respect of its *non-mainstream regulated activities* in the same way as an *exempt professional firm* which is a member of the same *designated professional body* in respect of its *exempt regulated activities*.





# Chapter 6

## Fees



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**[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]**



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# Chapter 7

## Insurance distribution activity



## 7.1 Register of persons carrying on insurance distribution activity

### Background

7.1.1 **G** The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (SI 2003/1476) and the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order (SI 2018/546) implement in part the provisions of the *IDD* and amend the *Regulated Activities Order*.

7.1.2 **G** Article 93 of the amended *Regulated Activities Order* requires the *FCA* to maintain an up-to-date record of every *unauthorised person*, whether an appointed representative or an *exempt professional firm* that carries on, or is proposing to carry on, *insurance distribution activity* and to whom the *general prohibition* does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the *Act*.

7.1.3 **G** The *FCA* is not to include an *exempt professional firm* in the register relating to *unauthorised persons* if:

(1) under a direction given by the *FCA* under section 328(1) of the *Act*, section 327(1) of the *Act* does not apply in relation to the carrying on by it of *insurance distribution activity*; or

(2) the *FCA* has made an order under section 329(2) of the *Act* disapplying section 327(1) of the *Act* in relation to the carrying on by the *exempt professional firm* of *insurance distribution activity*.

### Provision of information to the FCA

7.1.4 **G** Article 94 of the *Regulated Activities Order* obliges a *designated professional body* to provide the *FCA* with the information it needs to maintain the record referred to in **PROF 7.1.2 G** of every *unauthorised person* that carries on, or proposes to carry on, *insurance distribution activity* and keep it up to date. This information needs to include the details referred to in **PROF 7.1.7 G**. This is the responsibility of the *designated professional body* and not each *exempt professional firm*.



**Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)**

- 7.1.5** G (1) The attention of *exempt professional firms* is drawn to the significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that *exempt professional firms* may not carry on certain regulated activities which relate to a contract of insurance in reliance on the *Part XX exemption* unless the *exempt professional firm* is included in the record of *unauthorised persons* carrying on *insurance distribution activity* maintained by the *FCA* under article 93 of the *Regulated Activities Order*.
- (2) Each *exempt professional firm* carrying on, or proposing to carry on, *insurance distribution activity* should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the *FCA*. Any such *exempt professional firm* carrying on, or proposing to carry on, *insurance distribution activity* whose name does not appear in the record maintained by the *FCA* is likely to be breaching the general prohibition which is a criminal offence under section 23 of the *Act*.

**Financial Services Register**

- 7.1.6** G In order to comply with its obligations to maintain a record of *unauthorised persons* that carry on, or are proposing to carry on, *insurance distribution activity*, the *FCA* has established an appropriate record which forms part of the record maintained by the *FCA* under section 347 of the *Act*. The record maintained by the *FCA* under section 347 of the *Act* is known as the *Financial Services Register*. The *Financial Services Register* therefore contains a record of each *authorised* and *unauthorised person* that carries on, or proposes to carry on, *insurance distribution activity*.

- 7.1.7** G The information to be included on the record in relation to *exempt professional firms* will, as required by the *IDD*, include details of:
- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, *insurance distribution activity*;
  - (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the *insurance distribution activity*; and
  - (3) each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the *IDD*:
    - (a) has established a *branch*; or
    - (b) is providing *cross border services*.

**FCA Website**

- 7.1.8** G The *Financial Services Register* can be accessed through the *FCA* website under the link [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register) .

## 7.2 Passporting under the IDD

- 7.2.1** **G** All *persons* that are on the register maintained by the *FCA* in accordance with article 3 of the *IDD*, and so permitted to conduct *insurance distribution activity*, are entitled to exercise the *EEA right* conferred upon them by articles 4 (freedom to provide services) and 6 (freedom of establishment) of the *IDD* to establish a *branch* or provide services relating to *insurance distribution activity* in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FCA* get the benefit of these passporting rights.
- 7.2.2** **G** Any *authorised professional firm* or *exempt professional firm* that is contemplating the exercise of rights under articles 4 (freedom to provide services) or 6 (freedom of establishment) of the *IDD* to establish a *branch* or provide services relating to *insurance distribution activity* in another *EEA State* is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including ■ SUP 13.
- 7.2.3** **G** A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the *IDD* must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FCA* a notice in the required form of its intention to establish the *branch*. ■ SUP 13.3.2 G to ■ SUP 13.3.2C G and ■ SUP 13.3.5 G detail the procedure to be followed once such a *notice of intention* has been received by the *FCA*. ■ SUP 13.5.1 R (Specified contents: notice of intention to establish a branch) and ■ SUP 13.6.9A G (Firms passporting under the *IDD*) will also be relevant.
- 7.2.4** **G** A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the *IDD* must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FCA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in ■ SUP 13.4.2 G, ■ SUP 13.4.4 G and ■ SUP 13.4.5AG. ■ SUP 13.5.2 R (Specified contents: notice of intention to provide cross border services) and ■ SUP 13.7.11AG will also be relevant.

## Professional firms

### PROF TP 1 Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	PROF 4.1.2 R	G	The <i>FCA</i> considers that the issue by an <i>exempt professional firm</i> of a letter to a client on a letterhead that includes a statement that it is "authorised" will be in breach of PROF 4.1.2 R. This includes a statement such as: 'This firm is authorised in the conduct of investment business by [name of recognised professional body] under the Financial Services Act 1986.' However, an <i>exempt professional firm</i> which has been authorised for investment business by a recognised professional body under the Financial Services Act 1986 may continue to use stocks of notepaper and other material that discloses its status under that act, provided that it strikes through the disclosure statement.	From commencement	Commencement
2	PROF	G	<u>General transitional provisions</u> <i>GEN</i> contains some technical transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at commencement.	From commencement	Commencement



## Professional firms

### Schedule 1 Record keeping requirements

#### Sch 1.1 G

There are no record keeping requirements in *PROF*.



## Professional firms

# Schedule 2 Notification requirements

### Sch 2.1 G

There are no notification or reporting requirements in *PROF*.





## Professional firms

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

There are no requirements for fees or other payments in *PROF*.



## Professional firms

### Schedule 4 Powers exercised

**Sch 4.1 G**  
[deleted]

**Sch 4.2 G**  
[deleted]



## Professional firms

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

The table below sets out the *rules* in *PROF* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

#### Sch 5.2 G

If a "YES" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No. 2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

#### Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

#### Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
PROF 5.2.1 R Conditions for non- mainstream regulated activity			Yes	No	No



## Professional firms

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

