

Chapter 8

Mandates

8.2 Definition of mandate

8.2.1

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A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) where those means are obtained in the course of, or in connection with, the *firm's insurance distribution activity*, they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
 - (a) instructions to another *person* in relation to the *client's money* that is credited to an account maintained by that other *person* for the *client*;
 - (b) instructions to another *person* in relation to any *money* to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client money* for the *client* in accordance with ■ CASS 5 or ■ CASS 7);
 - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UK UCITS*);
 - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

The form of a mandate

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A *mandate* can take any form and need not state that it is a *mandate*. For example it could take the form of:

- (1) a standalone document containing certain information conferring authority to control a *client's* assets or liabilities on the *firm*;
- (2) a specific provision within a document or agreement that also relates to other matters; or
- (3) an authority provided by a client orally.

Retention by the firm

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- (1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):
 - (a) after it uses it to effect those immediate transactions; or
 - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

Ability to give instructions to another person

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The instructions referred to at ■ CASS 8.2.1 R (4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with ■ CASS 5, ■ CASS 6 or ■ CASS 7 (for example, because of an exemption in those *rules*).

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A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1R (4)(a) could include a direct debit instruction over a *client's* bank account in favour of the *firm*. The fact that the instruction was given by the *client* in the form of a paperless direct debit would not prevent it from being a *mandate*.

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A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(d) could include the *client's* credit card details.

Conditions on use of mandate and client's further involvement

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- (1) If a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client*

might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.

- (2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in ■ CASS 8.2.1 R (5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in ■ CASS 8.2.1 R (4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.