

Chapter 14

MCD article 3(1)(b) credit
agreements

14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

- 14.1.1** **G** The purpose of **MCOB 14** is to apply *rules* and *guidance* in *MCOB* (including, but not restricted to, *rules* that implement the *MCD*) to:
- (1) *MCD article 3(1)(b) creditors*; and
 - (2) *MCD article 3(1)(b) credit intermediaries*;
- and to identify *rules* and *guidance* in *CONC* that also apply, or may (subject to the election in **MCOB 14.1.5R**) apply, to them.
- 14.1.2** **R** A *firm* must treat a proposed *credit agreement* as an *MCD article 3(1)(b) credit agreement* if the *firm* knows, or has reasonable cause to suspect, that the purpose of the *credit agreement* is to acquire or retain property rights in land or in an existing or projected building.
- 14.1.3** **R** Subject to **MCOB 14.1.5R** and **MCOB 14.1.7R**:
- (1) *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* must comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements (see **MCOB 14.1.4G**):
 - (a) **MCOB 1.2.19G** (identifying MCD credit agreements);
 - (b) **MCOB 2.3** (inducements);
 - (c) **MCOB 2.5A** (the customer's best interests);
 - (d) **MCOB 2A** (Mortgage Credit Directive) except for **MCOB 2A.1.4R**;
 - (e) **MCOB 3A.1** to **MCOB 3A.5** (financial promotions and communications with customers);
 - (f) **MCOB 3B** (MCD general information);
 - (g) **MCOB 4A.2** (adequate explanations);
 - (h) **MCOB 5A** (MCD pre-application disclosure);
 - (i) **MCOB 6A** (MCD disclosure at the offer stage);
 - (j) **MCOB 7.5** (mortgages: statements);
 - (k) **MCOB 7A** (additional MCD disclosure: start of contract and after sale);

- (l) ■ MCOB 7B (MCD: further advances);
 - (m) ■ MCOB 10A (MCD Annual Percentage Rate of Charge);
 - (n) ■ MCOB 11.6 (responsible lending and financing);
 - (o) ■ MCOB 11A (additional MCD responsible lending requirements);
 - (p) ■ MCOB 12.3 (early repayment charges);
 - (q) ■ MCOB 12.5 (excessive charges); and
 - (r) ■ MCOB 13 (arrears, payment shortfalls and reposessions) except for ■ MCOB 13.3.9R;
- (2) *MCD article 3(1)(b) credit intermediaries* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) ■ MCOB 4.4A.1R(1) and (2) (initial disclosure requirements);
 - (b) ■ MCOB 4.4A.4R(1)(a) and (3) (initial disclosure requirements);
 - (c) ■ MCOB 4.4A.8R (1)(a), (c), (d) and (2)(e) (initial disclosure requirements); and
 - (d) ■ MCOB 4A.1 (additional disclosure by MCD mortgage credit intermediaries); and
- (3) *MCD article 3(1)(b) credit advisers* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) ■ MCOB 2A.1.4R (Mortgage Credit Directive);
 - (b) ■ MCOB 4.7A (advised sales) except for:
 - (i) ■ MCOB 4.7A.1G(2) to (4);
 - (ii) ■ MCOB 4.7A.11R to ■ MCOB 4.7A.14E; and
 - (iii) ■ MCOB 4.7A.24R to ■ MCOB 4.7A.25R; and
 - (c) ■ MCOB 4A.3 (record of recommendation).

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The changes that ■ MCOB 14.1.3R requires to be made to *rules* applied by that *rule* include the following:

- (1) any reference to 'land' includes a reference to property rights in an existing or projected building;
- (2) any reference to *regulated mortgage contract* or *MCD regulated mortgage contract* includes a reference to an *MCD article 3(1)(b) credit agreement*; and
- (3) any reference to *qualifying credit* includes a reference to an *MCD article 3(1)(b) credit agreement*.

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An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* must elect to comply with either:

		<p>(1) ■ MCOB 3A.1 to ■ MCOB 3A.5 (financial promotions and communications with customers); or</p> <p>(2) ■ MCOB 3A.2, ■ MCOB 3A.5 and ■ CONC 3 (financial promotions and communications with customers) (except for ■ CONC 3.4, ■ CONC 3.5.3R to ■ CONC 3.5.10R, ■ CONC 3.6.6R, and ■ CONC 3.9);</p> <p>and having made an election, the <i>firm</i> must comply with the provisions with which it has elected to comply.</p>
14.1.6	G	<p>(1) A <i>firm</i> should generally make one election under ■ MCOB 14.1.5R for all of its <i>MCD article 3(1)(b) credit intermediation activity</i> or all of its lending under <i>MCD article 3(1)(b) credit agreements</i>, at any given time.</p> <p>(2) Where a <i>firm</i> wishes to make different elections for different types of <i>MCD article 3(1)(b) credit intermediation activity</i> or lending under <i>MCD article 3(1)(b) credit agreements</i>, it should maintain processes to ensure that the <i>rules</i> applicable to each type of activity and each agreement or <i>customer</i> are clearly identifiable to its staff and, on request, to <i>customers</i> and the <i>FCA</i>. Its processes should also ensure that each agreement or <i>customer</i> is dealt with in compliance with those <i>rules</i>.</p>
14.1.7	R	<p>The following provisions do not apply to an <i>MCD article 3(1)(b) creditor</i> or <i>MCD article 3(1)(b) credit intermediary</i> where the conditions in ■ CONC 1.2.10R(2) are fulfilled: ■ MCOB 7.5 (mortgages: statements) and ■ MCOB 13 (arrears, payment shortfalls and repossessions) (except for ■ MCOB 13.3.1AR to ■ MCOB 13.3.1BG, ■ MCOB 13.3.2AR to ■ MCOB 13.3.8G, and ■ MCOB 13.6.1R to ■ MCOB 13.6.2G, which apply even where those conditions are fulfilled).</p>
14.1.8	G	<p>■ CONC 1.2.10R(1)(a) relates to high net worth borrowers; the purpose of ■ MCOB 14.1.7R is to enable a high net worth borrower under an <i>MCD article 3(1)(b) credit agreement</i> to waive the protections and remedies applicable to <i>regulated credit agreements</i>, except for those that implemented the <i>MCD</i>.</p>
14.1.9	G	<p><i>MCD article 3(1)(b) creditors</i> and <i>MCD article 3(1)(b) credit intermediaries</i> are also subject to certain provisions in <i>CONC</i>: see ■ CONC 1.2.8R.</p>