

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 repossessions) 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).

14.1.4

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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:

- (1) ■ MCOB 3A.1 to ■ MCOB 3A.5 (financial promotions and communications with customers); or
- (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);

and having made an election, the *firm* must comply with the provisions with which it has elected to comply.

14.1.6

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- (1) A *firm* should generally make one election under ■ MCOB 14.1.5R for all of its *MCD article 3(1)(b) credit intermediation activity* or all of its lending under *MCD article 3(1)(b) credit agreements*, at any given time.
- (2) Where a *firm* wishes to make different elections for different types of *MCD article 3(1)(b) credit intermediation activity* or lending under *MCD article 3(1)(b) credit agreements*, it should maintain processes to ensure that the *rules* applicable to each type of activity and each agreement or *customer* are clearly identifiable to its staff and, on request, to *customers* and the *FCA*. Its processes should also ensure that each agreement or *customer* is dealt with in compliance with those *rules*.

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The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* 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).

14.1.8

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■ 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 *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that implemented the *MCD*.

14.1.9

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MCD article 3(1)(b) creditors and *MCD article 3(1)(b) credit intermediaries* are also subject to certain provisions in *CONC*: see ■ CONC 1.2.8R.