

Chapter 2

Authorisation and regulated activities

2.10 Persons carrying on regulated activities who do not need authorisation

2.10.1 **G** There are various provisions that disapply the *general prohibition* from specific *persons* in relation to the carrying on by them of particular *regulated activities*. There is, however, no general provision for *persons* to apply for an exemption.

2.10.2 **G** *Persons* may be exempted from the *general prohibition* in relation to one or more particular *regulated activities*. The extent of any exemption may also be limited to specified circumstances (such as where another *person* who is *authorised* and has relevant *permission* has accepted responsibility for the *regulated activities* in question) or subject to specified conditions (such as a requirement that the activity is not carried on for pecuniary gain).

2.10.3 **G** The *Act* provides that *appointed representatives* (see ■ PERG 2.10.5 G), *recognised investment exchanges* and *recognised clearing houses* (see ■ PERG 2.10.6 G) and certain other *persons* exempt under miscellaneous provisions (see ■ PERG 2.10.7 G) are *exempt persons* (although in certain circumstances, an *appointed representative* may not be an *exempt person*, but may have a *limited permission* to carry on certain *credit-related regulated activities*). Members of Lloyds and members of the professions are not '*exempt persons*' as such, but the *general prohibition* in section 19 of the *Act* only applies to them in certain circumstances. The distinction is significant in relation to various provisions (such as those in the *Regulated Activities Order*) that apply only to transactions and other activities that involve *exempt persons*.

2.10.4 **G** *Appointed representatives* and the *persons* exempt under miscellaneous provisions cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others. If a *person* is already *authorised*, and proposes to carry on additional *regulated activities* in respect of which he would otherwise be exempt as an *appointed representative* or under miscellaneous provisions, he must seek an extension to his existing *permission* to cover those additional activities. A *person* in either of these categories who would otherwise be exempt in relation to particular activities will, if he becomes *authorised*, no longer be able to rely on the exemption.

Appointed representatives

2.10.5 **G** With one exception, a *person* is exempt if they are an *appointed representative* of an *authorised person*. In some circumstances, however, a

person may be an appointed representative and not be exempt, if the person has a limited permission for certain credit-related regulated activities. See ■ SUP 12 (Appointed representatives). But where an appointed representative carries on insurance distribution or reinsurance distribution, that person will not be exempt unless they are included on the register kept by the FCA under article 93 of the Regulated Activities Order (Duty to maintain a record of unauthorised persons carrying on insurance distribution activities) (see ■ PERG 5.13 (Appointed representatives)).

Recognised Investment Exchanges, Recognised Clearing Houses and Recognised Auction Platforms

2.10.6 **G** Investment exchanges and clearing houses can apply for recognition under Part XVIII of the Act (Recognised investment exchanges and clearing houses). Auction platforms can apply for recognition under the RAP Regulations. See REC.

Particular exempt persons

2.10.7 **G** Various named persons are exempted by Order made by the Treasury under section 38 of the Act from the need to obtain authorisation (the Exemption Order). Some of the exemptions are subject to restrictions as to the circumstances in which they apply. For example, a person is only exempt when acting in a particular capacity or for particular purposes.

2.10.8 **G** The exemptions apply so as to confer exemption on persons from the general prohibition in respect of four distinct categories of regulated activities.

- (1) The first category is carrying on any regulated activity, apart from effecting or carrying out contracts of insurance (or agreeing to do so). Exempt persons here are generally supranational bodies of which the United Kingdom or another EEA State is a member.
- (2) The second category is the regulated activity of accepting deposits. Exempt persons here include municipal banks, local authorities, charities and industrial and provident societies.
- (3) The third category is carrying on any of those regulated activities relating to securities or relevant investments or to 'any property' (or agreeing to do so). Exempt persons here include persons whose activities are subject to a certain degree of control or oversight by the Government.
- (4) The fourth category is carrying on one or more specified regulated activities (or agreeing to do so). Exempt persons here cover a range of different persons.

Members of Lloyd's

2.10.9 **G** Several activities carried on in connection with business at Lloyds are regulated activities in respect of which authorisation must be obtained. These include the regulated activities of advising on syndicate participation at Lloyd's or managing the underwriting capacity of Lloyd's syndicate as a managing agent at Lloyd's or arranging (bringing about) deals in

investments or making arrangements with a view to transactions in investments for another in relation to such participation or underwriting capacity.

2.10.10 **G** But under section 316 of the *Act* (Direction by a regulator) the *general prohibition* does not apply to a *person* who is a member of the *Society of Lloyds* unless the *FCA* or *PRA* has made a direction that it should apply. The *general prohibition* is disapplied in relation to any *regulated activity* carried on by a member relating to *contracts of insurance* written at *Lloyds*. Directions can be made by the *FCA* or *PRA* in relation to individual *members* or the *members* of the *Society of Lloyds* taken together. Alternatively, instead of being required to obtain *authorisation*, a member of the *Society of Lloyd's* may, as a result of a direction under section 316 of the *Act*, become subject to specific provisions of the *Act* even though he is not an *authorised person*.

2.10.11 **G** A *person* who ceased to be an *underwriting member* at any time on or after 24 December 1996 may, without *authorisation*, carry out *contracts of insurance* he has underwritten at *Lloyds*. But this is subject to any requirements or *rules* that the *PRA* may impose under sections 320 to 322 of the *Act* (Former underwriting members).

Members of the professions.....

2.10.12 **G** The *general prohibition* does not in certain circumstances apply to a *person* providing professional services that are supervised and regulated by a professional body designated by the Treasury under section 326 of the *Act* (Designation of professional bodies) (see *PROF*). Certain of the exclusions from *regulated activities* outlined in ■ PERG 2.8 and ■ PERG 2.9 will be relevant to members of *designated professional bodies*. The regime outlined below applies only where no exclusion applies and a *person* will be carrying on a *regulated activity*.

2.10.13 **G** Such a *person* may carry on *regulated activities* if the conditions outlined below are met, that is the *person*:

- (1) is not affected by an order or direction made by the *FCA* under section 328 or 329 of the *Act* (Directions and orders in relation to the general prohibition) which has the effect of re-imposing the *general prohibition* in any particular case;
- (2) is, or is controlled by, a member of a profession;
- (3) does not receive any pecuniary reward or other advantage from the *regulated activities* which is given to him by any *person* other than his client (or if he does, he must account to his client for it);
- (4) provides any service in the course of carrying on the *regulated activities* in a manner which is incidental to the provision of professional services;

- (5) carries on only those *regulated activities* which are permitted by the rules of the professional body or in respect of which they are an *exempt person*; and
- (6) Is not an *authorised person*.

2.10.14 **G** The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the Act (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

- (1) *accepting deposits*;
- (2) *effecting or carrying out contracts of insurance*;
- (3) *dealing in investments as principal*;
- (3A) [deleted]
- (3B) *managing a UK UCITS*;
- (3C) *acting as trustee or depositary of a UK UCITS*;
- (3D) *managing an AIF*;
- (3E) *acting as trustee or depositary of an AIF*;
- (4) *establishing, operating or winding up a collective investment scheme*;
- (5) *establishing, operating or winding up a stakeholder pension scheme or a personal pension scheme*;
- (6) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (7) *entering as provider into funeral plan contracts*;
- (7A) *carrying out a funeral plan contract as provider*;
- (8) agreeing to do certain of the above activities.

2.10.15 **G** In addition, there are restrictions on carrying on (or agreeing to carry on) certain other *regulated activities*. These relate to *managing investments, advising on investments, advising on a home finance transaction, advising on syndicate participation at Lloyd's, entering into a home finance transaction or administering a home finance transaction*.

2.10.16 **G** A *person* carrying on *regulated activities* under the regime for members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those *regulated activities* that they are able to carry on without *authorisation* under the Act. Where such a *person* is carrying on *insurance distribution or reinsurance distribution*, that *person*

must also be included on the register kept by the *FCA* under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance distribution activities) (see ■ PERG 5.10 (Exemptions)).