

Chapter 4

Guidance on regulated activities connected with mortgages

4.2 Introduction

Requirement for authorisation or exemption

- 4.2.1 **G** In most cases, any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or an *exempt person*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. ■ PERG 2.2 (Introduction) contains further *guidance* on these consequences.

Professional firms

- 4.2.2 **G** Certain *professional firms* are allowed to carry on some *regulated activities* without *authorisation* so long as they comply with specified conditions (see ■ PERG 4.14 (Mortgage activities carried on by professional firms)).

Questions to be considered to decide if authorisation is required

- 4.2.3 **G** A *person* who is concerned to know whether his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flowchart in ■ PERG 4.18):
- (1) will I be carrying on my activities by way of business (see ■ PERG 4.3.3 G (The business test))?
 - (2) if so, will my activities relate to *regulated mortgage contracts* (see ■ PERG 4.4 (What is a regulated mortgage contract))?
 - (3) if so, will I be carrying on any of the *regulated mortgage activities* (see ■ PERG 4.5 (Arranging regulated mortgage contracts) to ■ PERG 4.9 (Agreeing to carry on a regulated activity))?
 - (4) if so, there is the necessary link with the *United Kingdom* (see ■ PERG 4.11 (Link between activities and the United Kingdom))?
 - (4A) is the only available exclusion the one for *CBTL firms* (see ■ PERG 4.10B (Regulation of buy to let lending))?
 - (5) if so, will any or all of my activities be excluded (see ■ PERG 4.5 (Arranging regulated mortgage contracts) to ■ PERG 4.10 (Exclusions applying to more than one regulated activity))?

- (5A) if so, is the exclusion on which I am relying disapplied because the business is subject to the *Mortgage Credit Directive* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive))?
- (6) if the answer to 4A is “no” and it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see ■ PERG 4.14 (Mortgage activities carried on by professional firms))?
- (7) if not, am I exempt as an *appointed representative* (see ■ PERG 4.12 (Appointed representatives))?
- (8) if not, am I otherwise an *exempt person* (see ■ PERG 4.13 (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is 'no', that *person* requires *authorisation* and should refer to the *FCA* website "Apply for authorisation": www.fca.org.uk/firms/authorisation/apply-authorisation for details of the application process.

However, if a *person* wishes to carry on *CBTL business* see ■ PERG 4.10B (Regulation of buy to let lending) it may be able benefit from the exclusion for *CBTL firms* and be placed on the relevant register described in ■ PERG 4.10B if:

- (a) no other exclusion applies; and
- (b) the answer to questions (6) to (8) is “no”.

Note that *the person* would need to apply to be included on the relevant register described in ■ PERG 4.10B.

4.2.4 G [deleted]

Financial promotion.....

4.2.5 G An *unauthorised person* who intends to carry on activities connected with mortgages will also need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to mortgages. *Persons* should refer to the general *guidance* on *financial promotion* in Appendix 1 to the *Authorisation manual*, ■ PERG 8 (Financial promotion and related activities) and, in particular, to ■ PERG 8.17 (Financial promotions concerning agreements for qualifying credit).