

Chapter 5

Guidance on insurance distribution activities

5.2 Introduction

5.2.1 **G** [deleted]

Requirement for authorisation or exemption

5.2.2 **G** Any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or exempt from the need for *authorisation*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. ■ PERG 2.2 (Authorisation and regulated activities) has further *guidance* on these consequences.

Questions to be considered to decide if authorisation is required

5.2.3 **G** A *person* who is concerned to know whether their proposed *insurance distribution activities* may require *authorisation* will need to consider the following questions:

- (1) will the activities relate to *contracts of insurance* (see ■ PERG 5.3(Contracts of insurance))?
- (2) if so, will I be carrying on any *insurance distribution activity* (see ■ PERG 5.5 (The regulated activities: dealing in contracts as agent) to ■ PERG 5.11 (Other aspects of exclusions))?
- (3) if so, will I be carrying on my activities by way of business (see ■ PERG 5.4 (The business test))?
- (4) if so, is there the necessary link with the *United Kingdom* (see ■ PERG 5.12 (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see ■ PERG 5.3.7 G (Connected contracts of insurance) to ■ PERG 5.3.8 G (Large risks); ■ PERG 5.6.4AG (Exclusions for the provision of information: article 33B and 72C) to ■ PERG 5.6.23 G (Other exclusions); ■ PERG 5.7.7 G (Exclusions); ■ PERG 5.8.24 G (Exclusion: periodical publications, broadcasts and web-sites) to ■ PERG 5.8.26 G (Other exclusions); ■ PERG 5.11 (Other aspects of exclusions) and ■ PERG 5.12.9 G to ■ PERG 5.12.10 G (Overseas persons))?
- (6) if 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 5.14.1 G to ■ PERG 5.14.4 G (Professionals))?

(7) if not, am I exempt as an *appointed representative* (see ■ PERG 5.13 (Appointed representatives))?

(8) if not, am I otherwise an exempt *person* (see ■ PERG 5.14.5 G (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 page "How to apply for authorisation": www.fca.org.uk/firms/authorisation/apply-authorisation for details of the application process. The order of these questions considers firstly whether a *person* is carrying on *insurance distribution activities* before dealing separately with the questions "will I be carrying on my activities by way of business?" (3) and "if so, will any or all of my activities be excluded?" (5).

5.2.4

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It is recognised pursuant to section 22 of the *Act* that a *person* will not be carrying on *regulated activities* in the first instance, including *insurance distribution activities*, unless the person is carrying on these activities by way of business. Similarly, where a *person's* activities are excluded that *person* cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the *Act*. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:

- (1) the *regulated activities*;
- (2) the business test; and
- (3) the exclusions.

Approach to implementation of the IDD

5.2.5

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The *IDD* imposes requirements upon *EEA States* relating to the regulation of *insurance distribution* and *reinsurance distribution*. The *IDD* defines "*insurance distribution*" as including the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. It includes the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. *Reinsurance distribution* is similarly defined (excluding the price comparison website activities). (The text of *IDD* articles 2.1(1), 2.1(2) and 2.2 is reproduced in full in ■ PERG 5.16.2G).

5.2.6

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The *United Kingdom* implemented the *IDD* (and the *IMD* before it), in part, through secondary legislation, which applies pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the *insurance distribution* and *reinsurance distribution* definitions in the *IDD* (see ■ PERG 5.2.5 G and the text of *IDD* articles 2.1(1), 2.1(2) and 2.2 in ■ PERG 5.16.2G).

- 5.2.7 G [deleted]
- 5.2.8 G As a result, each of the *regulated activities* below potentially applies to any *contract of insurance*:

 - (1) *dealing in investments as agent* (article 21 (Dealing in investments as agent));
 - (2) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments));
 - (3) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments));
 - (4) *assisting in the administration and performance of a contract of insurance* (article 39A (Assisting in the administration and performance of a contract of insurance));
 - (5) *advising on investments (except P2P agreements)* (article 53(1) (Advising on investments));
 - (6) agreeing to carry on any of the above *regulated activities* (article 64 (Agreeing to carry on specified types of activity)).
- 5.2.9 G It is the scope of the *Regulated Activities Order* rather than the *IDD* which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the activities set out in the *IDD* is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in ■ PERG 5.11.9 G (Activities carried on in the course of a profession or non-investment business)).
- 5.2.10 G **Financial promotion**.....
An *unauthorised person* who intends to carry on activities connected with *contracts of insurance* will need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to *contracts of insurance*. *Persons* should refer to the general *guidance on financial promotion* in ■ PERG 8 (Financial promotion and related activities). (See in particular ■ PERG 8.17A (Financial promotions concerning insurance distribution activities) for information on *financial promotions* that relate to *insurance distribution activities*.)