

Chapter 6

Guidance on the Identification of Contracts of Insurance

6.5 General principles

- 6.5.1** **G** The starting point for the identification of a *contract of insurance* is the case of *Prudential v. Commissioners of Inland Revenue* [1904] 2 KB 658, from which the description set out in ■ PERG 6.3.4 G is drawn. Any contracts that fall outside that description are unlikely to be *contracts of insurance*.
- 6.5.2** **G** The *FCA* will interpret and apply the description in ■ PERG 6.3.4 G in the light of applicable legislation and common law, including case law.
- 6.5.3** **G** In particular, if the common law is unclear as to whether or not a particular contract is a *contract of insurance*, the *FCA* will interpret and apply the common law in the context of and in a way that is consistent with the purpose of the *Act* as expressed in the *FCA*'s statutory objectives.
- 6.5.4** **G** The *FCA* will apply the following principles of construction to determine whether a contract is a *contract of insurance*.
- (1) In applying the description in ■ PERG 6.3.4 G, more weight attaches to the substance of the contract, than to the form of the contract. The form of the contract is relevant (see ■ PERG 6.6.8 G (3) and ■ (4)) but not decisive of whether a contract is a *contract of insurance*: *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1997] Ch. 173 (C.A.).
 - (2) In particular, the substance of the provider's obligation determines the substance of the contract: *In re Sentinel Securities* [1996] 1 WLR 316. Accordingly, the *FCA* is unlikely to treat the provider's or the customer's intention or purpose in entering into a contract as relevant to its classification.
 - (3) The contract must be characterised as a whole and not according to its 'dominant purpose' or the relative weight of its 'insurance content': *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1997] Ch. 173 (C.A.).
 - (4) Since only contracts of marine insurance and certain *contracts of insurance* effected without consideration are required to be in writing, a *contract of insurance* may be oral or may be expressed in a number of documents.