

Chapter 8

Financial promotion and related activities



8.17-A Financial promotions concerning consumer credit and consumer hire

8.17-A.1 **G** Section 21 of the *Act* applies to *financial promotions* in relation to relevant consumer credit and consumer hire. This section sets out guidance about such *financial promotions*.

Controlled investments

8.17-A.2 **G** Rights under a relevant credit agreement are a *controlled investment*. A relevant credit agreement is defined as a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*.

8.17-A.3 **G** Rights under a *consumer hire agreement* are also a *controlled investment*.

Controlled activities

8.17-A.4 **G** Providing relevant consumer credit is a *controlled activity*. This is defined as entering into a relevant credit agreement (other than an agreement under which *qualifying credit* is provided) as *lender*, or exercising or having the rights to exercise the rights of the *lender* under such an agreement.

8.17-A.5 **G** The *controlled activities* also include providing consumer hire. A *person* provides consumer hire if he enters into a *regulated consumer hire agreement* (or an agreement that would be such an agreement were it not exempt under article 60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreement: exemptions relating to nature of hirer) of the *Regulated Activities Order*) as *owner* or exercises or has the right to exercise the rights of the *owner* under such an agreement.

8.17-A.6 **G** Operating an electronic system in relation to lending is a *controlled activity*. For the purposes of this *controlled activity*, the *controlled investment* of rights under a relevant credit agreement includes rights under an agreement within paragraph 4C(4) of Schedule 1 to the *Financial Promotion Order* (which is similar to an agreement within article 36H of the *Regulated Activities Order*, guidance on which is given in ■ PERG 2.7.10 G).

8.17-A.7 **G** There are three other *controlled activities* that involve both of the *controlled investments* of relevant credit agreements and consumer hire agreements:

- (1) credit broking;
- (2) debt adjusting;
- (3) debt counselling;

8.17-A.8 G The *controlled activities* in ■ PERG 8.17-A.6 G and ■ PERG 8.17-A.7 G are substantially the same as the *regulated activities* of *operating an electronic system in relation to lending, credit broking, debt adjusting and debt counselling* (although an activity is not the *controlled activity* of credit broking to the extent that it constitutes the *controlled activity* of arranging *qualifying credit*). *Guidance on these regulated activities* is given in ■ PERG 2.7.7E G (credit broking), ■ PERG 2.7.7H G (operating an electronic system), ■ PERG 2.7.8B G (debt adjusting) and ■ PERG 2.7.8C G (debt counselling). Agreeing to carry on the above activities also constitutes a *controlled activity*.

Application of exemptions to financial promotions about agreements for relevant consumer credit or consumer hire

8.17-A.9 G *Financial promotions* about relevant consumer credit or consumer hire are subject to the exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities). A number of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) also apply. Guidance on some of these (which apply to *financial promotions* about both *qualifying credit* and relevant consumer credit) is given in ■ PERG 8.17.10 G to ■ PERG 8.17.12 G. There is one exemption that applies specifically to relevant consumer credit and consumer hire, referred to in ■ PERG 8.17-A.10 G.

Promotions of credit for business purposes (article 46A)

8.17-A.10 G

- (1) Article 46A of the *Financial Promotion Order* exempts a *communication* which relates to the *controlled activities* of operating an electronic system in relation to lending, providing relevant consumer credit or providing consumer hire.
- (2) This exemption applies only if the *communication*:
 - (a) indicates clearly that a *person* is willing to engage in the investment activity for the purposes of another *person's* business; and
 - (b) does not indicate (by express words or otherwise) that the *person* is willing to engage in the investment activity for any other purpose.
- (3) For the purposes of this exemption, references to a "business" do not include a business carried on by the *person communicating* the promotion, or by a *person* who is a *credit broker* in relation to the agreement to which the promotion relates.