Chapter 14

MCD article 3(1)(b) credit agreements
14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

14.1.1 The purpose of MCOB 14 is to apply rules and guidance in MCOB (including, but not restricted to, rules that implement the MCD) to:

(1) MCD article 3(1)(b) creditors; and

(2) MCD article 3(1)(b) credit intermediaries;

and to identify rules and guidance in CONC that also apply, or may (subject to the election in MCOB 14.1.5R) apply, to them.

14.1.2 A firm must treat a proposed credit agreement as an MCD article 3(1)(b) credit agreement if the firm knows, or has reasonable cause to suspect, that the purpose of the credit agreement is to acquire or retain property rights in land or in an existing or projected building.

14.1.3 Subject to MCOB 14.1.5R and MCOB 14.1.7R:

(1) MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries must comply with the following provisions in MCOB. These provisions apply with such changes as are necessary to apply them to MCD article 3(1)(b) credit agreements and activity undertaken in relation to those agreements (see MCOB 14.1.4G):

(a) MCOB 1.2.19G (identifying MCD credit agreements);  
(b) MCOB 2.3 (inducements);  
(c) MCOB 2.5A (the customer’s best interests);  
(d) MCOB 2A (Mortgage Credit Directive) except for MCOB 2A.1.4R;  
(e) MCOB 3A.1 to MCOB 3A.5 (financial promotions and communications with customers);  
(f) MCOB 3B (MCD general information);  
(g) MCOB 4A.2 (adequate explanations);  
(h) MCOB 5A (MCD pre-application disclosure);  
(i) MCOB 6A (MCD disclosure at the offer stage);  
(j) MCOB 7.5 (mortgages: statements);  
(k) MCOB 7A (additional MCD disclosure: start of contract and after sale);
Section 14.1: Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

(1) MCOB 7B (MCD: further advances);

(m) MCOB 10A (MCD Annual Percentage Rate of Charge);

(n) MCOB 11.6 (responsible lending and financing);

(o) MCOB 11A (additional MCD responsible lending requirements);

(p) MCOB 12.3 (early repayment charges);

(q) MCOB 12.5 (excessive charges); and

(r) MCOB 13 (arrears, payment shortfalls and repossessions) except for MCOB 13.3.9R;

(2) MCD article 3(1)(b) credit intermediaries must additionally comply with the following provisions in MCOB. These provisions apply with such changes as are necessary to apply them to MCD article 3(1)(b) credit agreements and activity undertaken in relation to those agreements:

(a) MCOB 4.4A.1R(1) and (2) (initial disclosure requirements);

(b) MCOB 4.4A.4R(1)(a) and (3) (initial disclosure requirements);

(c) MCOB 4.4A.8R (1)(a), (c), (d) and (2)(e) (initial disclosure requirements); and

(d) MCOB 4A.1 (additional disclosure by MCD mortgage credit intermediaries); and

(3) MCD article 3(1)(b) credit advisers must additionally comply with the following provisions in MCOB. These provisions apply with such changes as are necessary to apply them to MCD article 3(1)(b) credit agreements and activity undertaken in relation to those agreements:

(a) MCOB 2A.1.4R (Mortgage Credit Directive);

(b) MCOB 4.7A (advised sales) except for:

(i) MCOB 4.7A.1G (2) to (4);

(ii) MCOB 4.7A.11R to MCOB 4.7A.14E; and

(iii) MCOB 4.7A.24R to MCOB 4.7A.25R; and

(c) MCOB 4A.3 (record of recommendation).

The changes that MCOB 14.1.3R requires to be made to rules applied by that rule include the following:

(1) any reference to ‘land’ includes a reference to property rights in an existing or projected building;

(2) any reference to regulated mortgage contract or MCD regulated mortgage contract includes a reference to an MCD article 3(1)(b) credit agreement; and

(3) any reference to qualifying credit includes a reference to an MCD article 3(1)(b) credit agreement.

An MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary must elect to comply with either:
(1) MCOB 3A.1 to MCOB 3A.5 (financial promotions and communications with customers); or

(2) MCOB 3A.2, MCOB 3A.5 and CONC 3 (financial promotions and communications with customers) (except for CONC 3.4, CONC 3.5.3R to CONC 3.5.10R, CONC 3.6.6R, and CONC 3.9);

and having made an election, the firm must comply with the provisions with which it has elected to comply.

14.1.6 A firm should generally make one election under MCOB 14.1.5R for all of its MCD article (3)(1)(b) credit intermediation activity or all of its lending under MCD article 3(1)(b) credit agreements, at any given time.

(2) Where a firm wishes to make different elections for different types of MCD article (3)(1)(b) credit intermediation activity or lending under MCD article 3(1)(b) credit agreements, it should maintain processes to ensure that the rules applicable to each type of activity and each agreement or customer are clearly identifiable to its staff and, on request, to customers and the FCA. Its processes should also ensure that each agreement or customer is dealt with in compliance with those rules.

14.1.7 The following provisions do not apply to an MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary where the conditions in CONC 1.2.10R(1) and (2) are fulfilled: MCOB 7.5 (mortgages: statements) and MCOB 13 (arrears, payment shortfalls and repossessions) (except for MCOB 13.3.1AR to MCOB 13.3.1BG, MCOB 13.3.2AR to MCOB 13.3.8G, and MCOB 13.6.1R to MCOB 13.6.2G, which apply even where those conditions are fulfilled).

[Note: article 60H(2) of the Regulated Activities Order]

14.1.8 CONC 1.2.10R(1)(a) relates to high net worth borrowers; the purpose of MCOB 14.1.7R is to enable a high net worth borrower under an MCD article 3(1)(b) credit agreement to waive the protections and remedies applicable to regulated credit agreements, except for those that implement the MCD.

14.1.9 MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries are also subject to certain provisions in CONC: see CONC 1.2.8R.