

Chapter 14

Guidance on home reversion and home purchase activities

14.4 Activities relating to home purchase plans

Q23. What is a home purchase plan?

Broadly speaking, a *home purchase plan* is an arrangement under which, at the time it is entered into:

- a *person* (the 'home purchase provider') buys a qualifying interest, or an undivided share of a qualifying interest, in land (other than timeshare accommodation) in the *United Kingdom*;
- an individual or a trustee whose beneficiary is an individual (the 'home purchaser') is obliged to buy that interest over the course of or at the end of a specified period; and
- the individual or a related person is entitled to use at least 40% of the land as a dwelling during that fixed period and intends to do so.

Where an undivided share of a qualifying interest is bought, the interest must be held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common.

This means that an arrangement is not a home purchase plan if:

- the home purchaser is not an individual or trustees;
- the land is used for the purpose of letting as a dwelling to someone other than a related person of the individual who is obliged to buy it;
- the land is used primarily for business purposes; or
- the land is overseas.

A related person, in relation to an individual, means:

- that person's spouse or civil partner; or
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
 - parent or grandparent;
 - child or grandchild; or
 - sibling.

Q24. Are home purchase plans limited to arrangements designed to comply with Islamic principles?

There is nothing in the definition of a *home purchase plan* to suggest that this is the case. However, it is clear from the comments made by HM Treasury in relation to the introduction of the Regulation of Financial Services (Land Transactions) Act 2005 that the definition is primarily directed at arrangements of this kind.

Q25. Will all Islamic *home financing* arrangements be home purchase plans?

No. Murabaha arrangements involve the homeowner buying the property from the provider on deferred payment terms. These types of arrangement will be *regulated mortgage contracts* assuming that they meet the necessary conditions including that there is a first legal charge over the property (see ■ PERG 4).

Ijara arrangements (where the provider buys the land and allows the customer to occupy it whilst also making regular payments towards eventually buying the land) and diminishing Musharaka arrangements (where the provider and the customer share an interest in the land and the customer gradually acquires a greater interest in the land over a period of time) will be *home purchase plans* provided they meet the necessary conditions (see Q23).

A home purchase plan may also satisfy the requirements for a *regulated mortgage contract*. Where this arises, the plan is treated as a home purchase plan and not a regulated mortgage contract.

Q26. When will I be carrying on the activity of entering into a home purchase plan?

You will carry on this activity by entering into a *home purchase plan* as the home purchase provider. Unlike a reversion transferee under a *home reversion plan*, you will not be carrying on a regulated activity purely as a result of acquiring rights, obligations or interests in land from the provider.

Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for providers that are *local authorities* (article 72G of the *Regulated Activities Order*).

Q28. When will I be carrying on the activity of administering a home purchase plan?

This will arise if you carry out either or both of the following functions in relation to a plan that was entered into by the home purchase provider by way of business on or after 6 April 2007:

- notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser.

But you will not be treated as *administering a home purchase plan* merely because you have, or you exercise, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

Q29. I propose to administer home purchase plans. How will I know if the plan I propose to administer has been entered into by way of business?

In most cases, this will be obvious because the provider will be a body corporate whose business involves being a provider under such plans and, in

the majority of cases, should be an *authorised person*. We understand that this is the usual situation with Islamic home financing arrangements. However, if the plan were to have been entered into by an investor, the factors set out in Q38 will need to be considered to determine whether it was entered into by way of business. A typical example of a plan not entered into by way of business would be where the provider is a friend or relative who does not seek to profit from acting as the provider. Another example might be a plan entered into by a charitable organisation that occasionally purchases interests in land with sums derived from charitable donations and that does so on non-commercial terms.

Q30. What exclusions may be available to me if I am administering home purchase plans?

Specific exclusions may apply if you are not an *authorised person* and:

- you arrange for an authorised person with the appropriate *Part 4A permission* to administer the plan - this includes where you administer the plan for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person who has Part 4A permission to administer such a plan.

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

Q31. When will I be carrying on the activity of arranging home purchase plans?

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another person to enter into a plan as a home purchaser;
- (2) for another person being a home purchaser to vary the terms of a plan entered into by him on or after 6 April 2007, in such a way as to vary his obligations under that plan; and
- (3) with a view to a person who participates in the arrangements entering into a plan as a home purchaser.

But none of these arranging activities will apply to you if they relate to a plan to which you are or will, as a result of your arranging activities, become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the plan or the variation as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a home purchaser by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of prospective home purchasers to a provider or intermediary.

Unlike home reversion plans, arranging for a person to enter into, or vary, a plan as a provider is not, itself, a regulated activity.

Q32. What exclusions may be available to me if I am arranging home purchase plans?

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an authorised person (article 29 of the *Regulated Activities Order*) (see Q33);
- where you have arranged for an *authorised person* to administer the plan or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(3) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q17 which applies equally to *home purchase plans*);
- introductions made to a regulated person who carries on home reversion plan activities (article 33A of the *Regulated Activities Order*) (see Q34);
- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*);
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by *local authorities* (article 72G of the *Regulated Activities Order*).

Q33. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging home purchase plans?

The exclusion will apply to you when, as an *unauthorised person*, you are arranging for a prospective home purchaser (your client) to enter into a plan with an authorised home purchase provider or through an authorised intermediary;

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

Q34. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging home purchase plans?

Broadly speaking, the exclusion will apply where:

- the arranging activity you carry on is limited to *making arrangements with a view to home purchase plans*;
- you make introductions of prospective home purchasers (your client) to an *authorised person*, an *appointed representative* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and

- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

Q35. When will I be carrying on the activity of advising on home purchase plans?

This will arise if you are:

- giving advice to a person who is or who is contemplating becoming a home purchaser; and
- the advice relates to the merits of his entering into a *home purchase plan* in that capacity or varying the terms of a plan that he has already entered into.

Advice on the merits of varying the terms of a plan is only regulated when the plan was entered into on or after 6 April 2007.

This differs from the position in relation to *home reversion plans* where advice given to the provider is also regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in ■ PERG 4.6 may be applied to the activity of *advising on a home purchase plan*.

Q36. What exclusions may be available to me if I am advising on home purchase plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*);
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by *local authorities* (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in ■ PERG 7.

Q37. Will changes involving the circumstances of the home purchaser that may take place after the plan has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a home purchase plan. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new plan to be entered into? and
- does the change involve a variation of the terms of the plan (if it was originally entered into on or after 6 April 2007) such as to vary the obligations of the home purchaser?

Broadly speaking, it would seem likely that, if the home purchaser were to move house, there would be a need for the existing plan to be terminated and a new plan to be entered into. Where this happens, the person who enters into the new plan as provider and anyone arranging, or advising the home purchaser on, the new plan will potentially need to be authorised or exempt. Changes such as may occur due to marriage or change of occupants or of other relevant details may necessitate a new plan. Alternatively, they

may involve a variation in the existing plan, depending on the extent to which they alter the obligations of the home purchaser. Where such changes do involve a variation, anyone advising the home purchaser on, or arranging, the variation would potentially need to be authorised or exempt. But this applies only where the plan was originally entered into on or after 6 April 2007.