

Chapter 2

Authorisation and regulated activities

2.9 Regulated activities: exclusions applicable in certain circumstances

2.9.1 **G** The various exclusions outlined below deal with a range of different circumstances.

(1) Within each set of circumstances, the *Regulated Activities Order*, in Chapter XVII of Part II of the Order, makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the *regulated activity* involved and the different language required (for example, some activities involve entering directly into transactions while others relate to the provision of services).

(2) [deleted]

2.9.2 **G** The exclusions grouped together in the *Regulated Activities Order* are described below in this chapter in general terms. The exact terms of each exclusion will need to be considered by any *person* who is considering whether they need *authorisation*. Each description is accompanied by an indication of which *regulated activities* are affected.

Trustees, nominees or personal representatives.....

2.9.3 **G** This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

(1) *dealing in investments as principal;*

(2) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*

(2A) *arranging a home finance transaction;*

(3) *managing investments;*

(4) *assisting in the administration and performance of a contract of insurance;*

(5) *safeguarding and administering investments;*

(6) *sending dematerialised instructions;*

(7) *advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction;*

- (8) *entering into a home finance transaction; and*
- (9) *administering a home finance transaction.*

The exclusion is, however, disapplied where a *person* is carrying on *insurance distribution* or *reinsurance distribution*, or the *person* would be an *MCD firm*. This is due to article 4(4A) and 4(4B) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities) and *guidance* on activities and exclusions relevant to the *MCD* is in ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive).

2.9.4

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A *person* carrying on certain *regulated activities* does not require *authorisation* in specified circumstances if he is acting in a representative capacity. The representative capacities covered by the exclusions depend on the *regulated activity* concerned but, in most cases, the focus is on *persons* who are acting as trustee or personal representative. In broad terms, the exclusions apply to specified transactions, or activities, that are part of the discharge of his general obligations by the trustee or representative when he is acting as such. Many of the exclusions require that the trustee or representative must not hold himself out as providing services consisting of the *regulated activity* in question. In addition, he must not receive remuneration that is additional to any he receives for acting in the representative capacity (although a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or representative is calculated by reference to time spent). The exclusions for *entering into a home finance transaction* and for *administering a home finance transaction*, however, work on a different basis. They apply where the activity relates to a *home finance transaction* under which the borrower, *reversion occupier*, *home purchaser* or *SRB agreement seller* as the case may be is a beneficiary.

Professions or business not involving regulated activities.....

2.9.5

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This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments, and making arrangements with a view to transactions in investments;*
- (2A) *arranging a home finance transaction;*
- (3) *assisting in the administration and performance of a contract of insurance;*
- (4) *safeguarding and administering investments; and*
- (5) *advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction.*

The exclusion is, however, disapplied where a *person* is carrying on *insurance distribution* or *reinsurance distribution*. This is due to article 4(4A) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution

activities). The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MCD firms* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

2.9.6 G The exclusions apply where the *regulated activity* is carried out in the course of a profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*. However, activities are only excluded to the extent that they may reasonably be regarded as a necessary part of the other services provided in the course of the profession or business. The exclusion does not apply if separate remuneration is received in respect of any *regulated activity* that is carried on. (See separate *guidance for authorised professional firms* in *PROF*.)

Sale of goods and supply of services

2.9.7 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *managing investments;*
- (5) *safeguarding and administering investments;* and
- (6) *advising on investments.*

2.9.8 G Broadly speaking, the exclusions focus on cases where the main business of a *person* is to sell goods or supply services but where certain activities may have to be carried on for the purposes of that business which would otherwise be *regulated activities*. The exclusions are not available where the customer to whom goods are sold or services are supplied is an individual. They are also not available where what is at issue is a transaction entered into, or service provided, in relation to rights under a *contract of insurance* or *units* in a *collective investment scheme* (or rights to, or interests in, either). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

Group and joint enterprises

2.9.9 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*

- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *managing investments;*
- (5) *safeguarding and administering investments;*
- (6) *sending dematerialised instructions; and*
- (7) *advising on investments.*

2.9.10 G These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a joint enterprise which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be *regulated activities* take place wholly within a group of companies, then there is no need for *authorisation*. The same principle applies to dealings or activities that take place wholly within a *joint enterprise* entered into for commercial purposes related to the participators' unregulated business. The exclusions in ■ PERG 2.9.9G (2), ■ (3), ■ (4) and ■ (7) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

Sale of body corporate.....

2.9.11 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments; and*
- (4) *advising on investments.*

2.9.12 G The exclusions apply in relation to transactions to *buy or sell shares* in a *body corporate* where, in broad terms:

- (1) the transaction involves the acquisition or disposal of a least 50 per cent of the voting shares in the *body corporate* and is, or is to be, between certain specified kinds of *person*; or
- (2) the object of the transaction may otherwise reasonably be regarded as being the acquisition of day-to-day control of the affairs of the *body corporate*.

These exclusions also apply to transactions that are entered into for the purposes of the above transactions (such as transactions involving the offer of *securities* in the offeror as consideration or part consideration for the sale of the *shares* in the *body corporate*). These exclusions do not have effect in relation to shares in an *open-ended investment company*. The exclusions in ■ PERG 2.9.11G (2), ■ (3) and ■ (4) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

2.9.12A G [deleted]

Employee share schemes

2.9.13 G This group of exclusions applies, in specified circumstance, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *safeguarding and administering investments.*

2.9.14 G In broad terms, the exclusions apply to activities which further an employee share scheme, or are carried on in operation of such a scheme. They apply to activities carried on by the *company* whose securities or debentures (which are given an extended meaning for this exclusion) are the subject of the scheme. They also apply to activities of any *company* in the same *group* or of any trustee who holds certain types of securities or debentures under the scheme. They do not apply to the activities of a *person* who is neither such a *company* nor such a trustee (for example, a third party administration service provider).

Overseas persons

2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (3A) *arranging a home finance transaction;*
- (3B) *operating a multilateral trading facility;*

- (3C) *operating an organised trading facility;*
- (4) *advising on investments;*
- (5) *entering into a home finance transaction;*
- (6) *administering a home finance transaction; and*
- (7) *agreeing to carry on the regulated activities of managing investments, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the performance and administration of a contract of insurance, safeguarding and administering investments or sending dematerialised instructions.*

2.9.16 **G** An overseas person is defined as a person who carries on what would be regulated activities (including any activity that would otherwise be excluded from being a regulated activity by virtue of the exclusions for overseas persons referred to in ■ PERG 2.9.15 G) but who does not do so, or offer to do so, from a permanent place of business maintained by him in the United Kingdom. Where a person does not have a permanent place of business in the United Kingdom, he will not, in any event, need to rely on these exclusions unless what he does is regarded as carried on in the United Kingdom (see ■ PERG 2.4). Nor will a person be able to rely on the exclusions in ■ PERG 2.9.15G (1) to (4) if when carrying on the relevant regulated activity it is a MiFID investment firm and its Home State is the United Kingdom.

2.9.17 **G** The exclusions are available, for regulated activities other than those that relate to home finance transactions in the two broad cases set out below. For some of these regulated activities, the exclusions apply in each case. In others, they apply in only one.

- (1) The first case is where the nature of the regulated activity requires the direct involvement of another person and that person is authorised or exempt (and acting within the scope of his exemption). For example, this might occur where the person with whom an overseas person deals is an authorised person or where the arrangements he makes are for transactions to be entered into by such a person.
- (2) The second case is where a particular regulated activity is carried on as a result of what is termed a 'legitimate approach'. An approach to an overseas person that has not been solicited by him in any way, or has been solicited in a way that does not contravene the restrictions on financial promotion in section 21 of the Act, is a legitimate approach. An approach that is made by him in a way that does not contravene section 21 of the Act is also a legitimate approach. In such circumstances, the overseas person can, without requiring authorisation, enter into deals with (or on behalf of) a person in the United Kingdom, give advice in the United Kingdom or enter into agreements in the United Kingdom to carry on certain regulated activities. The exemptions to the financial promotion restrictions made by the Treasury under section 21 of the Act (Restrictions on financial promotion) will be relevant to the question of whether those restrictions have been contravened (see separate guidance on

financial promotion in ■ PERG 8 (Financial promotion and related activities)).

2.9.17A **G** The exclusions for *overseas persons* who carry on certain *regulated activities* related to *home finance transactions* work in a different way. They depend on the residency of the borrower or borrowers, the *reversion occupier* or *reversion occupiers*, the *home purchaser* or *home purchasers* or the *SRB agreement seller* or *SRB agreement sellers* as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider or *SRB agreement provider*. Guidance on these exclusions is in ■ PERG 4.11 (Link between activities and the United Kingdom) and ■ PERG 14.6 (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities).

2.9.17B **G**

- (1) The exclusion for *overseas persons* described in ■ PERG 2.9.17G does not apply to an *investment firm* or *credit institution* set up in a third country that has been found equivalent under article 46 or 47 of *MiFIR*, as described in more detail in the rest of this paragraph.
- (2) Article 46 of *MiFIR* has a mechanism under which the *FCA* may register a *third country investment firm* or a third country *credit institution* without a *branch* in the *United Kingdom*. Registration allows the *third country investment firm* or third country *credit institution* to provide certain services to certain customers within the *United Kingdom* without the need for further authorisation by the *United Kingdom*.
- (3) (2) only applies where the Treasury has made a formal assessment that the legal and supervisory arrangements of that third country ensure that *investment firms* and *credit institutions* authorised in that third country comply with legally binding prudential and conduct of business requirements which have equivalent effect to the *UK* provisions which implemented *MiFID*, *MiFIR* and *CRD*.
- (4) [deleted]
- (5) The exclusion for *overseas persons* described in ■ PERG 2.9.17G does not apply to *investment services* or *activities* provided by an *investment firm* or *credit institution* in (1) if:
 - (a) it is registered as described in (2); or
 - (b) [deleted]
 - (c) it provides the *investment services* or *activities* at the initiative of certain *United Kingdom*-based clients.
- (6) However, (5) only applies from three years after the equivalence decision in (3). For the first three years following the equivalence decision, the exclusion for *overseas persons* described in ■ PERG 2.9.17G continues to apply in the normal way.
- (7) The purpose of the three year period is to implement article 54 of *MiFIR* (transitional provisions) under which the *Act* will continue to apply for three years after the equivalence decision in (3).

(8) There are currently no special provisions in the *Act* or related legislation such as the *Regulated Activities Order* dealing expressly and specifically with the treatment of *third country investment firms* and *third country credit institutions* under the *general prohibition* after the overseas persons exclusion is switched off at the end of the three year period in (6).

2.9.18 **G** [deleted]

Insurance distribution activities

2.9.19 **G** The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.

(1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services, or services related to travel in connection with *general insurance contracts* that satisfy a number of conditions.

(a) The contracts must:

(i) have a premium of:

(A) 600 euro or less (calculated on a pro rata annual basis);
or

(B) 200 euro or less, where the *contracts of insurance* are complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,

or equivalent amounts of sterling or another currency;

(ii) cover:

(A) breakdown or loss of or damage to non-motor goods supplied by the provider;

(B) loss of or damage to baggage and other risks linked to certain travel services booked with the provider; or

(C) the non-use of services supplied by the provider.

(b) The travel services must be the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation, or must relate to attendance at an event organised or managed by the provider.

(c) Where the travel services relate to an event, the exclusion does not apply if the party seeking insurance is an individual (acting in their private capacity) or a small business. A small business is a sole trader, *body corporate*, *partnership* or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts.

- (d) There must not be any liability risk cover other than (in relation to travel risk) where this is ancillary to the main risk covered in a travel policy.
- (e) The insurance must be complementary to the goods or services being supplied by the provider in the course of the provider's carrying on a business or profession not otherwise consisting of *regulated activities*.
- (f) This exclusion applies where the *regulated activities* concerned are:
 - (i) *dealing in investments as agent;*
 - (ii) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
 - (iii) *assisting in the administration and performance of a contract of insurance; and*
 - (iv) *advising on investments.*

(2) The second exclusion applies where information is provided to a *policyholder* by a *person* on an incidental basis in the course of that *person's* profession or business that does not otherwise consist of *regulated activities*. This exclusion applies where the *regulated activities* are:

- (a) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (b) *managing investments;*
- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *safeguarding and administering investments;*

(3) The third exclusion applies to certain *general insurance contracts* covering large risks where the risk is situated outside the *United Kingdom*. This exclusion applies where the *regulated activities* concerned are:

- (a) *dealing in investments as agent;*
- (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *advising on investments.*

The fourth exclusion applies where specified information is provided to a potential *policyholder*, or to a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*), an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or an *IDD reinsurance intermediary*, by a *person* who does not take any other step to assist in the conclusion of a *contract of insurance* (see ■ PERG 2.8.6A(10A)G and ■ PERG 5.6.4B-EG).

Guidance on these and other exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities).

Business angel-led enterprise capital funds

2.9.20 **G** This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (3) *managing investments;*
- (4) *safeguarding and administering investments;*
- (4A) *managing a UK UCITS;*
- (4B) *managing an AIF;*
- (5) *establishing, operating or winding up a collective investment scheme;* and
- (6) *advising on investments.*

2.9.21 **G** The exclusions apply, in general terms:

- (1) to a *body corporate* with limited liability:
 - (a) that is formed in accordance with the law of, and having its registered office, central administration or principal place of business in, the *United Kingdom*;
 - (b) that operates a business angel-led enterprise capital fund, being a fund that invests only in *securities* of unlisted *companies* and whose participants are made up solely of *persons* of a specified kind; and
 - (c) whose members are limited to *persons* of a specified kind.

2.9.21A **G** The exclusions for business angel-led enterprise capital funds are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G (Investment services and activities)).

Managers of UCITS and AIFs

2.9.22 **G** This exclusion applies to a *person* with a *Part 4A permission* to carry on the activity of *managing an AIF* or *managing a UK UCITS*. The exclusion means that activities carried on by the *person* in connection with, or for the purposes of, *managing a UK UCITS* or (as the case may be) *managing an AIF*, are excluded from being *regulated activities* (except the activities of *managing an AIF* and *managing a UK UCITS* themselves). In the *FCA's* view this is particularly likely to affect the following *regulated activities*:

- (1) *dealing in investments as agent;*
- (2) *dealing in investments as principal;*

- (3) *arranging (bringing about) deals in investments;*
- (4) *managing investments;*
- (5) *arranging safeguarding and administration of assets;*
- (6) *advising on investments (except pension transfers and pension opt-outs); and*
- (7) *agreeing to carry on specified kinds of activity.*

Local authorities

2.9.23

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This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *accepting deposits;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *arranging (bringing about) regulated mortgage contracts;*
- (6) *making arrangements with a view to regulated mortgage contracts;*
- (7) *arranging (bringing about) a home reversion plan;*
- (8) *making arrangements with a view to a home reversion plan;*
- (9) *arranging (bringing about) a home purchase plan;*
- (10) *making arrangements with a view to a home purchase plan;*
- (11) *arranging (bringing about) a regulated sale and rent back agreement;*
- (12) *making arrangements with a view to a regulated sale and rent back agreement;*
- (13) *credit broking;*
- (14) *assisting in the administration and performance of a contract of insurance;*
- (15) *debt adjusting;*
- (16) *debt counselling;*
- (17) *debt collecting;*
- (18) *debt administration;*
- (19) *advising on investments;*
- (20) *advising on regulated mortgage contracts;*

- (20A) *advising on regulated credit agreements for the acquisition of land;*
- (21) *advising on a home reversion plan;*
- (22) *advising on a home purchase plan;*
- (23) *advising on a regulated sale and rent back agreement;*
- (23A) *entering as provider into a funeral plan contract;*
- (23B) *carrying out a funeral plan contract as provider;*
- (24) *entering into a regulated credit agreement as lender;*
- (25) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;*
- (26) *entering into a regulated consumer hire agreement as owner;*
- (27) *exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;*
- (28) *entering into a regulated mortgage contract;*
- (29) *administering a regulated mortgage contract;*
- (30) *entering into a home reversion plan;*
- (31) *administering a home reversion plan;*
- (32) *entering into a home purchase plan;*
- (33) *administering a home purchase plan;*
- (34) *entering into a regulated sale and rent back agreement;*
- (35) *administering a regulated sale and rent back agreement;*
- (36) *providing credit information services.*

2.9.24

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- (1) Subject to (2), (3) and (4), the exclusions apply, in relation to any activity carried on by a *local authority*.
- (2) The exclusion relating to the *regulated activities* of:
 - (a) *dealing in investments as agents;*
 - (b) *arranging (bringing about) deals in investments;*
 - (c) *making arrangements with a view to transactions in investments;*
 - (d) *assisting in the administration and performance of a contract of insurance; and*
 - (e) *advising on investments;*applies to any activity carried on by a *local authority* which relates to a *contract of insurance* which is not a *life policy*.

(3) In essence, the *Regulated Activities Order* exempts activity in relation to *credit agreements* carried on by a *local authority* to the extent permitted by the *Consumer Credit Directive* and the *MCD*. The exclusions relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* therefore apply only in relation to an agreement within (3A) or (4).

(3A) A *credit agreement* is within this paragraph if:

- (a) it was entered into before 21 March 2016; or
- (b) it is entered into on or after that date for a purpose other than acquiring or retaining property rights in *land* or in an existing or projected building;

but a *credit agreement* is only within this paragraph in so far as the agreement is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see (3B)).

(3B) In summary, the kinds of agreements to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive include *credit agreements*:

- (c) involving a total amount of credit less than £160 or more than £60,260, except where the agreement is a *residential renovation agreement*;
- (d) which are *hire-purchase agreements*, where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement (such an obligation is deemed to exist if it is so decided unilaterally by the *lender*);
- (e) in the form of an *overdraft facility* and where the *credit* has to be repaid within one month;
- (f) where the *credit* is granted free of interest and without any other charges;
- (g) under which the *credit* has to be repaid within three months and only insignificant charges are payable;
- (h) where the *credit* is granted by an employer to his employees as a secondary activity free of interest or at an *APR* lower than those prevailing on the market and which are not offered to the public generally;
- (i) which are the outcome of a settlement reached in court or before another statutory authority;
- (j) which relate to the deferred payment, free of charge, of an existing debt;
- (k) for pawnbroking where the liability of the consumer is strictly limited to the pledged item; and
- (l) which relate to loans granted to a restricted group (not the public generally) under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest, or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

- (4) A *credit agreement* is within this paragraph if it:
 - (a) is entered into on or after 21 March 2016; and
 - (b) meets one of the following conditions:
 - (i) it is of a kind to which the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed in ■ PERG 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
 - (ii) it is a *bridging loan* described in ■ PERG 4.13.6 G; or
 - (iii) it is a restricted public loan described in ■ PERG 4.13.7 G.

Insolvency practitioners

2.9.25

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This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *operating a multilateral trading facility;*
- (5A) *operating an organised trading facility;*
- (6) *managing investments;*
- (7) *assisting in the administration and performance of a contract of insurance;*
- (8) *debt adjusting;*
- (9) *debt counselling;*
- (10) *debt collecting;*
- (11) *debt administration;*
- (12) *safeguarding and administering investments;*
- (13) *sending dematerialised instructions;*
- (14) *managing a UK UCITS;*
- (15) *acting as trustee or depositary of a UK UCITS;*
- (16) *managing an AIF;*
- (17) *acting as a trustee or depositary of an AIF;*
- (18) *establishing, operating or winding up a collective investment scheme;*

- (19) *establishing, operating or winding up a stakeholder pension scheme;*
- (20) *establishing, operating or winding up a personal pension scheme;*
- (21) *advising on investments;*
- (22) *providing credit information services;*

2.9.26 G These exclusions apply to a *person* acting as an insolvency practitioner. The term "insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to *debt adjusting*, *debt counselling* and *providing credit information services* also apply to any activity carried on by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner. In relation to *debt counselling*, insolvency practitioners may find ■ PERG 17.7 helpful, including examples 12, 13 and 13A.

2.9.27 G A *person* acting as an insolvency practitioner or in reasonable contemplation of that *person's* appointment as an insolvency practitioner include anything done by the *person's* firm in connection with that *person* so acting. For these purposes, the reference to "the *person's* firm" means the *person's* employer, the *partnership* in which he is a partner or the *limited liability partnership* of which he is a member, as the case may be.

Registered consumer buy-to-let credit firms

2.9.28 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *arranging (bringing about) regulated mortgage contracts;*
- (2) *making arrangements with a view to regulated mortgage contracts;*
- (3) *credit broking;*
- (4) *advising on regulated mortgage contracts;*
- (5) *advising on regulated credit agreements for the acquisition of land;*
- (6) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;*
- (7) *entering into a regulated credit agreement as a lender;*
- (8) *entering into a regulated mortgage contract;*
- (9) *administering a regulated mortgage contract.*

2.9.29 G These exclusions apply to any *CBTL business* carried on by a *CBTL firm* (see ■ PERG 4.10B).

Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive

2.9.30

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This exclusion applies to the activities of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent; and*
- (3) *arranging (bringing about) deals in investments.*

It is available to a *person* who is not an *authorised person* and whose activity is one to which article 2(1)(j) of *MiFID* applies (see ■ PERG 13 Q44). Where the *person* meets the conditions of the exemption relating to article 2(1)(j) but during a calendar year is not able to perform the market threshold test in article 2 of *MiFID RTS 20* because the relevant data is not available from an *EU* institution or regulator, its activities are excluded from the activities in (1) to (3) above. Similarly, if the *person* has made an application for a *Part 4A permission* in relation to any of the activities in (1) to (3) above, to which article 2(1)(j) of *MiFID* applies, the exclusion applies for as long as that application has not been determined or withdrawn. In each case, a *person* seeking to rely on the article 2(1)(j) exemption must provide notice to the *FCA* in accordance with regulation 47 of the *MiFI Regulations*.