

Chapter 5

Guidance on insurance distribution activities

5.1 Application and purpose

Application

- 5.1.1 **G** This chapter applies principally to any *person* who needs to know whether they carry on *insurance distribution activities* and are thereby subject to *FCA* regulation. As such it will be of relevance among others to:
- (1) insurance brokers;
 - (2) insurance advisers;
 - (3) *insurance undertakings*; and
 - (4) other *persons* involved in the sale and administration of *contracts of insurance*, even where these activities are secondary to their main business.

Purpose of guidance

- 5.1.2 **G** [not used]
- 5.1.3 **G** [not used]
- 5.1.4 **G** [not used]
- 5.1.5 **G** [not used]
- 5.1.6 **G** The purpose of this *guidance* is to help *persons* consider whether they need *authorisation* or a variation of their *Part 4A permission*. Businesses who act only as introducers of *insurance business* are directed in particular to ■ PERG 5.6.2 G to ■ PERG 5.6.9 G to help consider whether they require *authorisation*. This *guidance* also explains the availability to *persons* carrying on *insurance distribution activities* of certain exemptions from regulation, including the possibility of becoming an *appointed representative* (see ■ PERG 5.13(Appointed representatives)).

Effect of guidance

5.1.7 **G** This *guidance* is issued under section 139A of the *Act* (Guidance). It is designed to throw light on particular aspects of regulatory requirements, not to be an exhaustive description of a *person's* obligations. If a *person* acts in line with the *guidance* and the circumstances contemplated by it, then the *FCA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates.

5.1.8 **G** Rights conferred on third parties cannot be affected by *guidance* given by the *FCA*. This *guidance* represents the *FCA's* view, and does not bind the courts, for example, in relation to the enforceability of a contract where there has been a breach of the *general prohibition* on carrying on a *regulated activity* in the *United Kingdom* without *authorisation* (see sections 26 to 29 of the *Act* (Enforceability of Agreements)).

5.1.9 **G** A *person* reading this *guidance* should refer to the *Act* and the various Orders that are referred to in this *guidance*. These should be used to find out the precise scope and effect of any particular provision referred to in this *guidance*. A *person* may need to seek his own legal advice.

5.1.10 **G** [not used]

Guidance on other activities

5.1.11 **G** A *person* may wish to carry on activities related to other forms of *investment* in connection with *contracts of insurance*, such as *advising on* and *arranging regulated mortgage contracts*. Such a *person* should also consult the *guidance* in ■ PERG 2 (Authorisation and Regulated Activities), ■ PERG 4 (Regulated activities connected with mortgages) and ■ PERG 8 (Financial Promotion and Related Activities).

5.2 Introduction

5.2.1 **G** [deleted]

Requirement for authorisation or exemption

5.2.2 **G** Any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or exempt from the need for *authorisation*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. ■ PERG 2.2 (Authorisation and regulated activities) has further *guidance* on these consequences.

Questions to be considered to decide if authorisation is required

5.2.3 **G** A *person* who is concerned to know whether their proposed *insurance distribution activities* may require *authorisation* will need to consider the following questions:

- (1) will the activities relate to *contracts of insurance* (see ■ PERG 5.3(Contracts of insurance))?
- (2) if so, will I be carrying on any *insurance distribution activity* (see ■ PERG 5.5 (The regulated activities: dealing in contracts as agent) to ■ PERG 5.11 (Other aspects of exclusions))?
- (3) if so, will I be carrying on my activities by way of business (see ■ PERG 5.4 (The business test))?

- (4) if so, is there the necessary link with the *United Kingdom* (see ■ PERG 5.12 (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see ■ PERG 5.3.7 G (Connected contracts of insurance) to ■ PERG 5.3.8 G (Large risks); ■ PERG 5.6.4AG (Exclusions for the provision of information: article 33B and 72C) to ■ PERG 5.6.23 G (Other exclusions); ■ PERG 5.7.7 G (Exclusions); ■ PERG 5.8.24 G (Exclusion: periodical publications, broadcasts and web-sites) to ■ PERG 5.8.26 G (Other exclusions); ■ PERG 5.11 (Other aspects of exclusions) and ■ PERG 5.12.9 G to ■ PERG 5.12.10 G (Overseas persons))?
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the Act (see ■ PERG 5.14.1 G to ■ PERG 5.14.4 G (Professionals))?
- (7) if not, am I exempt as an *appointed representative* (see ■ PERG 5.13 (Appointed representatives))?
- (8) if not, am I otherwise an exempt *person* (see ■ PERG 5.14.5 G (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is "no", that *person* requires *authorisation* and should refer to the FCA website page "How to apply for authorisation": www.fca.org.uk/firms/authorisation/apply-authorisation for details of the application process. The order of these questions considers firstly whether a *person* is carrying on *insurance distribution activities* before dealing separately with the questions "will I be carrying on my activities by way of business?" (3) and "if so, will any or all of my activities be excluded?" (5).

5.2.4

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It is recognised pursuant to section 22 of the Act that a *person* will not be carrying on *regulated activities* in the first instance, including *insurance distribution activities*, unless the person is carrying on these activities by way of business. Similarly, where a *person's* activities are excluded that *person* cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the Act. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:

- (1) the *regulated activities*;
- (2) the business test; and
- (3) the exclusions.

Approach to implementation of the IDD

5.2.5

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The *IDD* imposes requirements upon *EEA States* relating to the regulation of *insurance distribution* and *reinsurance distribution*. The *IDD* defines "*insurance distribution*" as including the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. It includes the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through

a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. *Reinsurance distribution* is similarly defined (excluding the price comparison website activities). (The text of *IDD* articles 2.1(1), 2.1(2) and 2.2 is reproduced in full in ■ PERG 5.16.2G).

5.2.6 **G** The *United Kingdom* has implemented the *IDD* (and the *IMD* before it), in part, through secondary legislation, which applies pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the *insurance distribution* and *reinsurance distribution* definitions in the *IDD* (see ■ PERG 5.2.5 G and the text of *IDD* articles 2.1(1), 2.1(2) and 2.2 in ■ PERG 5.16.2G).

5.2.7 **G** [deleted]

5.2.8 **G** As a result, each of the *regulated activities* below potentially applies to any *contract of insurance*:

- (1) *dealing in investments as agent* (article 21 (Dealing in investments as agent));
- (2) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments));
- (3) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments));
- (4) *assisting in the administration and performance of a contract of insurance* (article 39A (Assisting in the administration and performance of a contract of insurance));
- (5) *advising on investments (except P2P agreements)* (article 53(1) (Advising on investments));
- (6) agreeing to carry on any of the above *regulated activities* (article 64 (Agreeing to carry on specified types of activity)).

5.2.9 **G** It is the scope of the *Regulated Activities Order* rather than the *IDD* which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the *IDD* is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in ■ PERG 5.11.9 G (Activities carried on in the course of a profession or non-investment business)).

Financial promotion

5.2.10

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An *unauthorised person* who intends to carry on activities connected with *contracts of insurance* will need to comply with section 21 of the Act (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to *contracts of insurance*. Persons should refer to the general *guidance on financial promotion* in ■ PERG 8 (Financial promotion and related activities). (See in particular ■ PERG 8.17A (Financial promotions concerning insurance distribution activities) for information on *financial promotions* that relate to *insurance distribution activities*.)



5.3 Contracts of insurance

5.3.1 **G** A person who is concerned to know whether his proposed activities may require *authorisation* will wish to consider whether those activities relate to *contracts of insurance* or *contracts of reinsurance*, or to *insurance business* or *reinsurance business*, which is the business of *effecting* or *carrying out contracts of insurance* or *reinsurance as principal*.

Definition

5.3.2 **G** The *Regulated Activities Order* does not attempt an exhaustive definition of a 'contract of insurance'. Instead, article 3(1) of the order (Interpretation) makes some specific extensions and limitations to the general common law meaning of the concept. For example, article 3(1) expressly extends the concept to fidelity bonds and similar contracts of guarantee, which are not contracts of insurance at common law, and it excludes certain *funeral plan contracts*, which would generally be contracts of insurance at common law.

5.3.3 **G** One consequence of this is that common law judicial decisions about whether particular contracts amount to 'insurance' or their being effected or carried out amounts to 'insurance business' are relevant in defining the regulatory scope of the *Act*.

5.3.4 **G** As with any other contract, a *contract of insurance* that is not effected by way of a deed will only be legally binding if, amongst other things, it is entered into for valuable consideration. Determining what amounts to sufficient consideration in any given case is a matter for the courts. In practice, however, the legal definition of consideration is very wide. In particular, just because a *contract of insurance* is 'free' in the colloquial sense does not mean that there is no consideration for it. In the vast majority of cases, therefore, 'free' insurance policies (such as policies that act as loss leaders for an *insurance undertaking*) will be binding contracts and will amount to *specified investments* and therefore be subject to regulation under the *Act*.

5.3.5 **G** The *Regulated Activities Order* does not define a *reinsurance* contract. The essential elements of the common law description of a *contract of insurance* are also the essential elements of a *reinsurance* contract. Whilst the *IDD* addresses insurance and *reinsurance* separately, throughout this *guidance* the term 'contract of insurance' (italicised or otherwise) also applies to contracts of *reinsurance*.

5.3.6 **G** Guidance describing how the *FCA* identifies *contracts of insurance* is in ■ PERG 6 (Guidance on the Identification of Contracts of Insurance).

Connected contracts of insurance

5.3.7 **G** Article 72B of the *Regulated Activities Order* (Activities carried on by a provider of relevant goods or services) excludes from *FCA* regulation certain *regulated activities* carried on by providers of non-motor goods or services and services related to travel in relation to *contracts of insurance* that satisfy a number of conditions. Details about the scope of this exclusion can be found at ■ PERG 5.11.13 G to ■ PERG 5.11.14G (Activities carried on by a provider of relevant goods or services).

Large risks

5.3.8 **G** Large risks situated outside the *EEA* are also excluded (described in more detail at ■ PERG 5.11.16 G (Large risks)). The location of the risk or commitment may be determined by reference to the *EEA State* in which the risk is situated, defined in article 13(13) of the *Solvency II Directive* or the *EEA State* of the commitment, defined in article 13(14) of the *Solvency II Directive*. Broadly put, this is:

- (1) for insurance relating to buildings and/or their contents, the *EEA State* in which the property is situated;
- (2) for insurance relating to vehicles, the *EEA State* of registration;
- (3) for policies of four months or less duration covering travel or holiday risks, where the *policy* was taken out;
- (4) in all other cases (including those determined by reference to the *EEA State* of the commitment), the *EEA State* where the policyholder has his habitual residence, or if the policyholder is a legal person, where his establishment, to which the contract relates, is situated.

Specified investments

5.3.9 **G** For an activity to be a *regulated activity*, it must be carried on in relation to 'specified investments' (see section 22 of the Act Regulated activities) and Part III of the *Regulated Activities Order* (Specified investments)). For the purposes of *insurance distribution activity*, *specified investments* include the following '*relevant investments*' defined in article 3(1) of the *Regulated Activities Order* (Interpretation):

- (1) rights under any *contract of insurance* (see article 75 (Contracts of insurance)); and
- (2) rights to or interests in rights under *life policies* (see article 89 (Rights to or interests in investments)).

'*Relevant investments*' is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and 53(1) (Advising on investments (except P2P agreements))

of the *Regulated Activities Order* to help define the types of investment to which the activities in each of these articles relate.

- 5.3.10 **G** A person will have rights under a *contract of insurance* when that person is a *policyholder*. The question of whether a person has rights under a *contract of insurance* may require careful consideration in the case of group policies (with reference to the *Glossary* definition of *policyholder*). In the case, in particular, of *general insurance contracts* and *pure protection contracts*, the existence or otherwise of rights under such policies may be relevant to whether a person is carrying on *insurance distribution activities*.
- 5.3.11 **G** A person may also have rights to or interests in rights under a *life policy* where he is not a *policyholder*, but this will again depend on the terms of the individual *policy*.



5.4 The business test

5.4.1 **G** A *person* will only need *authorisation* or exemption if carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated Activities)).

5.4.2 **G** There is power in the *Act* for the Treasury to specify the circumstances in which a *person* is or is not to be regarded as carrying on *regulated activities* by way of business. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for *insurance distribution activity* is distinguished from the standard test for 'investment business' in article 3 of the *Business Order*. Under article 3(4) of the *Business Order*, a *person* is not to be regarded as carrying on by way of business any *insurance distribution activity* unless that *person* takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of *insurance distribution activities*:

- (1) does a *person* receive remuneration for these activities?
- (2) if so, does he take up or pursue these activities by way of business?

5.4.3 **G**

- (1) As regards **■** PERG 5.4.2G(1), the *Business Order* does not provide a definition of 'remuneration', however 'remuneration' is defined in the *IDD*. Article 2(1)(9) of the *IDD* defines 'remuneration' to mean any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.
- (2) In the *FCA's* view, 'remuneration' in the *Business Order* follows the meaning of the *IDD* definition of remuneration, and:
 - (a) it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them. For example, where a *person* pays discounted premiums for their own insurance needs in return for bringing other business to an *insurance undertaking*, the discount would amount to remuneration for the purposes of the *Business Order*;
 - (b) it can also take the form of an economic benefit which the *person* expects to receive as a result of carrying on *insurance distribution activities*;

(c) it does not have to be provided or identified separately from remuneration for other goods or services provided. Nor is there a minimum level of remuneration.

5.4.4

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As regards ■ PERG 5.4.2G (2), in the *FCA's* view, for a *person* to take up or pursue *insurance distribution activity* by way of business, the *person* will usually need to be carrying on those activities with a degree of regularity. The *person* will also usually need to be carrying on the activities for commercial purposes. That is to say, the *person* will normally be expecting to gain a direct financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the *FCA's* view:

- (1) it is not necessarily the case that services provided free of charge will not amount to a business; for example, advice (including advice available on a website) may be provided free of charge to potential *policyholders* but in the course of a business funded by commission payments; and
- (2) the 'by way of business' test may very occasionally be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done 'by way of business' in other respects, for example, because of the size of reward received or its relevance to other business activities).

5.4.5

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It follows that whether or not any particular *person* is acting 'by way of business' for these purposes will depend on that *person's* individual circumstances. However, a typical example of where the applicable business test would be likely to be satisfied by someone whose main business is not *insurance distribution activities*, is where a *person* recommends or arranges specific *insurance policies* in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6

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Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

- (1) arrangements which are carried out by a *person* for their own benefit, or for members of the *person's* family;
- (2) where employers provide insurance benefits for staff; and
- (3) where affinity groups or clubs set up insurance benefits for members.

5.4.7

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■ PERG 5.4.8 G contains a table that summarises the main issues surrounding the business test as applied to *insurance distribution activities* and that may assist *persons* to determine whether they will need *authorisation* or exemption. The approach taken in the table involves identifying factors that, in the *FCA's* view, are likely to play a part in the analysis. Indicators are then given as to the significance of each factor to the *person's* circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a *person* has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to

provide a clear conclusion for everyone. But it should enable *persons* to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make their position clearer. The *person* to whom the indicators are applied is referred to in the table as 'P'.

5.4.8

G Table: Carrying on insurance distribution activities 'for remuneration' and 'by way of business'

Carrying on insurance distribution activities 'for remuneration' and 'by way of business'		
'For remuneration'		
Factor	Indicators that P <u>does not</u> carry on activities "for remuneration"	Indicators that P <u>does</u> carry on activities "for remuneration"
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money's worth)	P does not receive any direct remuneration specifically identified as a reward for P's carrying on <i>insurance distribution activities</i> .	P receives direct remuneration specifically identified as being a reward for P's carrying on <i>insurance distribution activities</i> .
Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between P and the insurer/broker or P's customer – including, for example, through the acceptance of P's terms and conditions or mutual re-	P does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on P's ability to make a profit from P's other activities.	P obtains an economic benefit that: (a) is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes <i>insurance distribution activities</i> but where no particular part of the fees is attributable to <i>insurance distribution activities</i> . This could include where <i>insurance distribution activities</i> are likely to: <ul style="list-style-type: none"> • play a material part in the success of P's other business activities or in P's ability to make a profit from them; or • provide P with a materially increased opportunity to provide other goods or services; or • be a major selling point for P's other business activities; or

cognition of the economic benefit that is likely to accrue to P). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on *insurance distribution activities* as part of other services.

- be essential for P to provide other goods or services.

P charges customers a greater amount for other goods or services than would be the case if P were not also carrying on *insurance distribution activities* for those customers and this:

- is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and
- has the potential to go beyond mere cost recovery.

Recovery of costs

P receives no benefits of any kind (direct or indirect) in respect of his *insurance distribution activities* beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the *insurer* or broker).

P receives benefits of any kind (direct or indirect) in respect of his *insurance distribution activities* which go beyond the reimbursement of his actual costs incurred in carrying on the activity.

'By way of business'

Factor

Indicators that P does not carry on activities "by way of business"

Indicators that P does carry on activities "by way of business"

Regularity/frequency

Involvement is one-off or infrequent (for instance, once or twice a year) provided that the transaction(s) is not

Involvement is frequent (for instance, once a week).
Involvement is infrequent but the transactions are of such size or importance that they are essential to the success of P's other business activities.
P has formal arrangements which envisage transactions taking place on a regular

	<p>of such size and importance that it is essential to the success of P's other business activities.</p> <p>Transactions do not result from formal arrangements (for instance, occasional involvement purely as a result of an unsolicited approach).</p>	<p>basis over time (whether or not such transactions turn out in practice to be regular).</p>
Holding out	<p>P does not hold him or herself out as providing a professional service that includes <i>insurance distribution activities</i> ('professional' meaning 'not the services of a layman').</p>	<p>P holds him or herself out as providing a professional service that includes <i>insurance distribution activities</i>.</p>
Relevance to other activities/ business	<p><i>Insurance distribution activities</i>:</p> <ul style="list-style-type: none"> • have no relevance to P's other activities; or • have some relevance but could easily be ceased without causing P any difficulty in carrying on their main activities; or • would be unlikely to result in a material reduction in income from P's main activities if ceased. 	<p><i>Insurance distribution activities</i>:</p> <ul style="list-style-type: none"> • are essential to P in carrying on their main activities; or • would cause a material disruption to P carrying on their main activities if ceased; or • would be likely to reduce P's income by a material amount.

Commercial benefit

P receives no direct or indirect pecuniary or economic benefit.

P is a layman and acting in that capacity.

P would not obtain materially less income from P's main activities if they did not include *insurance distribution activities*.

P receives a direct or indirect pecuniary or economic benefit from carrying on *insurance distribution activities* – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that P provides.

P would obtain materially less income from P's main activities if they did not include *insurance distribution activities*.



5.5 The regulated activities: dealing in contracts as agent

- 5.5.1** **G** Article 21 of the *Regulated Activities Order* (Dealing in investments as agent) makes dealing in *contracts of insurance* as agent a *regulated activity*. The activity is defined in terms of *buying, selling*, subscribing for or underwriting contracts as agent, that is, on behalf of another. Examples include:
- (1) where an intermediary, by accepting on the *insurance undertaking's* behalf to provide the insurance, commits an *insurance undertaking* to provide insurance for a prospective policyholder; or
 - (2) where the intermediary agrees, on behalf of a prospective *policyholder*, to *buy* an *insurance policy*.
- 5.5.2** **G** Intermediaries with delegated authority to bind *insurance undertakings* are likely to be *dealing in investments as agent*. It should be noted, in particular, that this is a *regulated activity*:
- (1) whether or not any advice is given (see ■ PERG 5.8 (The regulated activities: advising on contracts of insurance)); and
 - (2) whether or not the intermediary deals through an *authorised person* (for example, where he instructs another agent who is an *authorised person* to enter into a *contract of insurance* on his *client's* behalf).
- 5.5.3** **G** There are also certain exclusions which are relevant to whether a *person* is carrying on the activity of *dealing in investments as agent* (see ■ PERG 5.11 (Other aspects of exclusions)).

5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance

5.6.1 **G** Article 25 of the *Regulated Activities Order* (Arranging deals in investments) describes two types of *regulated activities* concerned with arranging deals in respect of *contracts of insurance*. These are:

- (1) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments)); and
- (2) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments)).

Article 25(1): arranging (bringing about) deals in investments

5.6.2 **G** The activity in article 25(1) is carried on only if the arrangements bring about, or would bring about, the transaction to which the arrangement relates. This is because of the exclusion in article 26 of the *Regulated Activities Order* (Arrangements not causing a deal). Article 26 excludes from article 25(1) arrangements which do not bring about or would not bring about the transaction to which the arrangements relate. In the FCA's view, a *person* would bring about a *contract of insurance* if his involvement in the chain of events leading to the *contract of insurance* were important enough that, without it, there would be no policy. Examples of this type of activity would include negotiating the terms of the *contract of insurance* on behalf of the customer with the *insurance undertaking* and vice versa, or assisting in the completion of a proposal form and sending it to the *insurance undertaking*. Other examples include where an *insurance undertaking* enters into a *contract of insurance* as *principal* or an intermediary enters into a *contract of insurance* as agent.

Article 25(2): making arrangements with a view to transactions in investments

5.6.3 **G** The activity within article 25(2) contrasts with article 25(1) in that it is not limited by the requirement that the arrangements would bring about the transaction to which they relate.

5.6.4 **G** Article 25(2) may, for instance, include activities of *persons* who help potential *policyholders* fill in or check application forms in the context of ongoing arrangements between these *persons* and *insurance undertakings*. A further example of this activity would be a *person* introducing customers to

an intermediary either for advice or to help arrange an insurance *policy*. The introduction might be oral or written. By contrast, the *FCA* considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to the article 25(2) activity.

Exclusions for provision of information: article 33B and 72C

5.6.4A **G** Articles 33B and 72C of the *Regulated Activities Order* provide exclusions relating to the provision of information from the *regulated activity of arranging*.

Exclusion: article 33B (Provision of information – contracts of insurance)

5.6.4B **G** In broad terms, article 33B of the *Regulated Activities Order* excludes from article 25 (*arranging*) activities that consist of:

- (1) the provision of information about a potential policyholder to:
 - (a) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or
 - (b) an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or
 - (c) an *IDD reinsurance intermediary*; or
- (2) the provision of information to a potential policyholder about:
 - (a) a *contract of insurance*; or
 - (b) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or *IDD reinsurance intermediary*,

where the provider of the information does not take any step other than the provision of information to assist in the conclusion of a *contract of insurance*.

5.6.4C **G** The exclusion in ■ PERG 5.6.4BG will be of assistance to persons who would otherwise be carrying on the *regulated activity of arranging*. This exclusion is intended to give effect to article 2.2 of the *IDD* (the text of which is reproduced in ■ PERG 5.16.2G(2)) which refers to the 'mere' provision of this information without taking any additional steps not being considered to constitute *insurance distribution*. In the *FCA's* view, the effect of this, and the reference in article 2.2(c) of the *IDD* to 'data and information on potential policyholders', is that the exclusion in ■ PERG 5.6.4BG covers those situations where a *person* provides existing information they hold on potential policyholders (for example their name and contact details) but does not extend to information they obtain from other means such as pre-purchase questioning.

5.6.4D **G** A *person* seeking to rely on article 33B cannot provide information other than the information specified in that article. That person also cannot take a step other than the provision of the specified information where such a step would assist in the conclusion of a *contract of insurance*. For example, a *person* who forwards a proposal form to an *insurance undertaking* would not be able to benefit from the exclusion. Similarly, where a *person* does

more than provide information (for example, by helping a potential policyholder fill in an application form) they would be unable to rely on this exclusion.

5.6.4E **G** This exclusion does not cover the activity of advising a customer under article 53(1) of the *Regulated Activities Order* (Advising on investments (other than P2P agreements)) (see ■ PERG 5.8 and ■ PERG 8.24).

Exclusion: article 72C (Provision of information on an incidental basis)

5.6.5 **G** Article 72C of the *Regulated Activities Order* provides another potential exclusion in relation to article 25, however, only for *persons* whose principal business is other than *insurance distribution activities*. In contrast to article 33B, article 72C also provides an exclusion for *regulated activities* other than *arranging*.

5.6.6 **G** In broad terms, article 72C of the *Regulated Activities Order* excludes from the activities of *arranging* and *assisting in the administration and performance of a contract of insurance* activities that:

- (1) consist of the provision of information to the *policyholder* or potential *policyholder*;
- (2) are carried on by a *person* carrying on any profession or business which does not otherwise consist of *regulated activities*; and
- (3) amount to the provision of information that may reasonably be regarded as being incidental to that profession or business.

5.6.7 **G** In the *FCA's* view, 'incidental' in this context means that the activity must arise out of, be complementary to or otherwise be sufficiently closely connected with the profession or business. In other words, there must be an inherent link between the activity and the firm's main business. For example, introducing dental insurance may be incidental to a dentist's activities; introducing pet insurance would not be incidental to his activities. In addition, to be considered 'incidental', in the *FCA's* view, the activity must not amount to the carrying on of a business in its own right.

5.6.8 **G** This exclusion applies to a *person* whose profession or business does not otherwise consist of *regulated activities*. In the *FCA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to *exempt professional firms*. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have *permission* to carry on *regulated activities* or are *appointed representatives*. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their

main profession or business. In contrast to article 33B, this exclusion only extends to information given to the *policyholder* or potential *policyholder* and not to the *insurance undertaking*. Unlike article 33B, article 72C does not specify what information may be provided within the scope of the exclusion. An intermediary who forwards a proposal form to an *insurance undertaking* would not be able to take the benefit of the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential *policyholder* fill in an application form), they cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).

5.6.9 G The exclusion may be of assistance to introducers who would otherwise be carrying on the *regulated activity* of *making arrangements with a view to transactions in investments*. Introducers may also find the *guidance* at ■ PERG 5.9.2 G (The regulated activities: agreeing to carry on a regulated activity) and ■ PERG 5.6.4BG to ■ PERG 5.6.4EG helpful. ■ PERG 5.6.17 G (Exclusion from article 25(2) for introducing) has *guidance* to assist *persons* to determine whether their introducing activities amount to *making arrangements with a view to transactions in investments*.

Exclusion from article 25(2): arrangements enabling parties to communicate

5.6.10 G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise bring within article 25(2) those who merely provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties. Simply providing the means by which parties to a transaction (or potential transaction) are able to communicate with each other is excluded from article 25(2) only. This will ensure that *persons* such as internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to fall within article 25(2)).

5.6.11 G In the *FCA's* view, the crucial element of the exclusion in article 27 is the inclusion of the word 'merely'. When a publisher, broadcaster or internet website operator goes beyond what is necessary for him to provide its service of publishing, broadcasting or otherwise facilitating the issue of promotions, it may well bring itself within the scope of article 25(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in ■ PERG 2.8.6G (2) (Arranging deals in investments and arranging a home finance transaction) and ■ PERG 8.32.6 G to ■ PERG 8.32.11 G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

5.6.12 G Article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) excludes from the *regulated activities* in article 25(1) and 25(2) arrangements made for or with a view to *contracts of insurance* when:

- (1) the *person* (P) making the arrangements is the only *policyholder*; or
- (2) P, as a result of the transaction, would become the only *policyholder*.

5.6.13 **G** Market makers in traded endowment policies may be able to rely on this exclusion to avoid the need to be authorised. They must ensure, however, that where they are carrying on the *regulated activity* of *dealing in investments as principal* (article 14) they are also able to rely on the exclusions in articles 15 or 16 (see the *guidance* in ■ PERG 2.8.4 G (Dealing in investments as principal)).

5.6.14 **G** *Insurance undertakings* do not fall within the terms of this exclusion and so will be *arranging contracts of insurance*, in addition to effecting and *carrying out contracts of insurance*.

5.6.15 **G** In some cases, a *person* may make arrangements to enter into a *contract of insurance as policyholder* on its own behalf and also arrange that another *person* become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the *IDD* is that they may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

5.6.16 **G** The restriction in the scope of article 28 raises an issue where there is a trust with co-trustees, where each trustee will be a *policyholder* with equal rights and obligations. If the activities of one of the trustees include *arranging* in respect of *contracts of insurance*, that trustee could be viewed as *arranging* on behalf of his co-trustees who will also be *policyholders*. Similar issues also arise in respect of trustees *assisting in the administration and performance of a contract of insurance*. The *FCA* is of the view, however, that trustees should not be regarded as carrying on *regulated activities* where they are acting as joint *policyholders* in *arranging* or *assisting in the administration and performance of a contract of insurance*. In this respect, trustees differ from *policyholders* under a group policy, where each *person* covered under the group policy may make claims on the policy in relation to his own risks. In that situation, a *policyholder* who is providing services to other *policyholders* of *arranging* or *assisting in the administration and performance of a contract of insurance* will be carrying on a *regulated activity*.

Exclusion from article 25(2) for introducing.....

5.6.17 **G** Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:

- (1) they are arrangements under which *persons* will be introduced to another *person*;
- (2) the *person* to whom introductions are to be made is:
 - (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which they are exempt; or

(c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves the *person* in engaging in certain activities;

- (3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* to which the arrangements relate; and
- (4) the arrangements do not relate to transactions relating to *contracts of insurance*.

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The effect of ■ PERG 5.6.17G (4) is that some *persons* who, in making introductions, are *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is usually the case if the arrangements for making introductions relate to *contracts of insurance* (■ PERG 5.6.19 G has further *guidance* on when arrangements for introductions may be regarded as relating to *contracts of insurance*). However, this does not mean that all introducers whose introductions relate directly or indirectly to *contracts of insurance* will necessarily require *authorisation* if they cannot use the exclusions in articles 33B or 72C of the *Regulated Activities Order* for merely passing information. For a *person* to need *authorisation*, they must first be carrying on the business of *making arrangements with a view to transactions in investments*. In the *FCA's* view, the following points will be relevant in determining whether this is the case.

- (1) Article 25(2) applies to ongoing arrangements made with a view to transactions taking place from time to time as a result of *persons* having taken part in the arrangements. So, they will not apply to one-off introductions or introductions that are not part of an ongoing pre-existing arrangement between introducer and introducee. An introducer who merely suggests to a *person* that he seeks advice or assistance from an *authorised person* or an *exempt person* with whom the introducer has no pre-existing agreement that anticipates introductions will be made, will not be making arrangements at all. He will simply be offering general advice or information.
- (2) The purpose of the arrangements must be for the *person* who is introduced to, in general terms, enter into a transaction to *buy or sell securities or relevant investments*. So, arrangements for introducing *persons* for advice only will not be caught (for example, introductions to a financial planner or to the publisher of an investment newsletter). In other cases, it may be likely that transactions will be entered into following the provision of advice. Provided the introducer is completely indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) as a result of the advice given to the *person* he has introduced, the introducer will not be *making arrangements with a view to transactions in investments*. This is likely to be the case where the introducer does not receive any pecuniary reward that is linked to the volume of business done as a result of his introductions.

5.6.19

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Where a *person* is *making arrangements with a view to transactions in investments* by way of making introductions, and he is not completely

indifferent to whether or not transactions may result, it may still be the case that the exclusion in article 33 will apply. In the *FCA's* view, this is where:

- (1) the introduction is for independent advice on *investments* generally; and
- (2) the introducer is indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) rather than any other type of *investment*.

This is because the arrangements for making introductions do not specifically relate to a *contract of insurance* or to any other type of *investment* but to *investments* generally. Whether or not a *person* is making arrangements for introductions for the purpose of the provision of independent advice on *investments* generally will depend on the facts in any particular case. But, in the *FCA's* view, it is very unlikely that article 33 could apply where introductions are made to a *person* for the purposes of that *person* giving advice on and then *arranging* general insurance.

5.6.20 G The table in ■ PERG 5.6.21 G has examples of the application of article 33 to arrangements for making introductions.

5.6.21 G Application of article 33 to arrangements for making introductions. This table belongs to ■ PERG 5.6.20 G.

	Type of introduction	Applicability of exclusion
1	Introductions are purely for the purpose of the provision of independent advice – Introducer is completely indifferent to whether or not transactions take place after advice has been given.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
2	Introduction is one-off or otherwise not part of pre-existing on-going arrangements that envisage such introduction being made.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
3	Introducer is not indifferent to whether or not transactions take place after advice has been given, but is indifferent to whether or not the transactions may involve a <i>contract of insurance</i> .	Exclusion will be available provided the introduction was made with a view to the provision of independent advice on <i>investments</i> generally.
4	Introducer is not indifferent to whether or not transactions take place after advice has been given (for example, because he expects to receive a percentage of the commission), and introductions specifically relate to <i>contracts of insurance</i> .	Exclusion is not available. If introducer is an <i>unauthorised person</i> , he will need <i>authorisation</i> or exemption as an <i>appointed representative</i> . If introducer is an <i>authorised person</i> (such as an IFA introducing to a general insurance broker), he will need to vary his <i>Part IV permission</i> accordingly. If introducer is an <i>appointed represent</i>

Type of introduction	Applicability of exclusion
	<i>ative</i> , he will need to ensure that his agreement covers making such arrangements.

Exclusion from article 25(2): arrangements for the provision of finance

5.6.22 G An *unauthorised person* who makes arrangements with a view to a *person* who participates in the arrangements *buying or selling contracts of insurance* may be excluded from article 25(2) by article 32 of the *Regulated Activities Order* (Provision of finance). This is provided the sole purpose of the arrangements is the provision of finance to enable the *person* to *buy* the *contract of insurance*. Premium finance companies may be able to rely on this exclusion provided the arrangements they put in place, taken as a whole, have as their sole purpose the provision of finance to fund premiums.

Other exclusions

5.6.23 G The *Regulated Activities Order* contains some other exclusions which have the effect of narrowing or limiting the application of *regulated activities* within article 25 by preventing certain activities from amounting to *regulated activities*. These are referred to in ■ PERG 5.11.8 G (Exclusions applying to more than one regulated activity).

5.7 The regulated activities: assisting in the administration and performance of a contract of insurance

- 5.7.1** **G** The *regulated activity of assisting in the administration and performance of a contract of insurance* (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, claims management on behalf of certain insurers is not a *regulated activity* (see ■ PERG 5.7.7 G (Exclusions)).
- 5.7.2** **G** Neither assisting in the administration nor assisting in the performance of a contract alone will fall within this activity. Generally, an activity will either amount to assisting in the administration or assisting in the performance but not both. Occasionally, however, an activity may amount to both *assisting in the administration and performance of a contract of insurance*. For example, where a *person* assists a claimant in filling in a claims form, in the *FCA's* view this amounts to assisting in the administration of a *contract of insurance*. In some instances, however, this may also amount to assisting in the performance of a *contract of insurance*. In the *FCA's* view, an example of when a *person* may be assisting in the performance of a contract is where a *person* fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a *person* may be assisting the *policyholder* to perform his contractual obligation to notify the *insurance undertaking* in the event of a claim and provide details of the claim in the manner and form required by the contract.
- 5.7.3** **G** Put another way, where an intermediary's assistance in filling in a claims form is material to whether performance takes place of the contractual obligation to notify claims, it is more likely to amount to *assisting in the administration and performance of a contract of insurance*. Conversely, in the *FCA's* view, a *person* who merely gives pointers about how to fill in the claims form or merely supplies information in support of a claim will not be assisting in the performance of a *contract of insurance*. Instead, the *person* will only be facilitating rather than assisting in the performance of a *contract of insurance*.
- 5.7.4** **G** More generally, an example of an activity that, in the *FCA's* view, is likely to amount to assisting a *policyholder* in both the administration and the performance of a *contract of insurance* is notifying a claim under a *policy* and then providing evidence in support of the claim, or helping negotiate its

settlement on the *policyholder's* behalf. Notifying an *insurance undertaking* of a claim assists the *policyholder* in discharging his contractual obligation to do so (assisting in the performance); providing evidence in support of the claim or negotiating its settlement assists management of the claim (assisting in the administration).

5.7.5 **G** On the other hand, where a *person* does no more than advise a *policyholder* generally about making a claim or provide evidence in support of a claim, this is unlikely to amount to both assisting in the administration and performance. Similarly, the mere collection of premiums from *policyholders* is unlikely, without more, to amount to *assisting in the administration and performance of a contract of insurance*. The collection of premiums from customers or clients at the pre-contract stage, however, may amount to *arranging* (see example in ■ PERG 5.15.4 G (Types of activity – are they regulated activities and, if so, why?)).

5.7.6 **G** Where a *person* receives funds on behalf of a *policyholder* in settlement of a claim, in the FCA's view, the act of receipt is likely to amount to assisting in the performance of a contract. By giving valid receipt, the *person* assists the *insurance undertaking* to discharge its contractual obligation to provide compensation to the *policyholder*. He may also be assisting the *policyholder* to discharge any obligations he may have under the contract to provide valid receipt of funds, upon settlement of a claim. Where a *person* provides valid receipt for funds received on behalf of the *policyholder*, he is also likely to be assisting in the administration of a *contract of insurance* (for example, making prior arrangements relating to transmission and receipt of payment).

Exclusions

5.7.7 **G** By article 39B of the *Regulated Activities Order* (Claims management on behalf of an insurer etc):

- (1) loss adjusting on behalf of a relevant insurer (see ■ PERG 5.7.8 G);
- (2) expert appraisal; and
- (3) managing claims for a relevant insurer;

are also excluded from the *regulated activity of assisting in the administration and performance of a contract of insurance*. This is where the activity is carried on in the course of carrying on any profession or business (see also ■ PERG 5.14 (Exemptions)). In determining whether they are carrying on the *regulated activity of assisting in the administration and performance of a contract of insurance*, therefore, *persons* should consider whether they are acting on behalf of the relevant insurer and not the *policyholder*.

5.7.8 **G** A 'relevant insurer' for the purposes of article 39B means:

- (1) an *authorised person* who has *permission* for *effecting and carrying out contracts of insurance*; or
- (2) a member of the Society of Lloyd's or the members of the Society of Lloyd's taken together; or

- (3) an *EEA firm* that is an *insurer*; or
- (4) a reinsurer, being a *person* whose main business consists of accepting risks ceded by a *person* falling under (1), (2) or (3) or a *person* who is established outside the *United Kingdom* and who carries on the activity of *effecting and carrying out contracts of insurance*.

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or

claims

management

on behalf of such a *person* will not be able to use the exclusion in article 39B.



5.8 The regulated activities: advising on contracts of insurance

- 5.8.1** **G** Article 53(1) of the *Regulated Activities Order* (Advising on Investments (except P2P agreements)) makes advising on *contracts of insurance* a *regulated activity*. This covers advice which is both:
- (1) given to a *person* in his capacity as an insured or potential insured, or as agent for an insured or a potential insured; and
 - (2) advice on the merits of the insured or his agent:
 - (a) *buying, selling*, subscribing for or underwriting a particular *contract of insurance*; or
 - (b) exercising any right conferred by a *contract of insurance* to *buy, sell*, subscribe for or underwrite a *contract of insurance*.
- 5.8.2** **G** For advice to fall within article 53(1), it must:
- (1) relate to a particular *contract of insurance* (that is, one that a *person* may enter into);
 - (2) be given to a *person* in his capacity as an investor or potential investor;
 - (3) be advice (that is, not just information); and
 - (4) relate to the merits of a *person buying, selling*, subscribing for or underwriting (or exercising any right to do so) a *contract of insurance* or rights to or interests in *life policies*.
- 5.8.3** **G** Each of these aspects is considered in greater detail in the table in **■ PERG 5.8.5 G**. Where an activity is identified as not amounting to *advising on investments (except P2P agreements)* it could still form part of another *regulated activity*. This will depend upon whether a *person's* activities, viewed as a whole, amount to *arranging*. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a *financial promotion* (see **■ PERG 8** (Financial promotion and related activities)).
- 5.8.3A** **G**
- (1) The scope of the *regulated activity of advising on investments (except P2P agreements)* is narrower for a *person* who is authorised for the purposes of the *Act* to carry on certain *regulated activities* (as set out in (2)) than as described in **■ PERG 5.8.1G** and **■ PERG 5.8.2G**.

5.8.3B

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- (2) The narrower scope of *advising on investments (except P2P agreements)* referred to in (1) applies to a *person* who is authorised for the purposes of the Act to carry on any *regulated activity* other than (or in addition to):
 - (a) *advising on investments (except P2P agreements)*; or
 - (b) the *regulated activity of agreeing to carry on a regulated activity* in relation to (a).
- (3) A *person* in (2) is not *advising on investments (except P2P agreements)* except to the extent that they are providing a *personal recommendation*.
- (4) ■ PERG 8.24 explains in more detail when *advising on investments (except P2P agreements)* is limited to providing *personal recommendations*.
- (5) ■ PERG 8.30B (Personal recommendations) explains what a *personal recommendation* is.

5.8.4

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Advice must relate to a particular contract of insurance

Advice about *contracts of insurance* will come within the *regulated activity* in article 53(1) of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53(1). In particular:

- (1) advice would come within article 53(1) if it took the form of a recommendation that a *person* should *buy* the ABC Insurers motor insurance;
- (2) advice would not relate to a particular contract if it consists of a recommendation only that a *person* should take out insurance of a particular class without identifying any particular *insurance undertaking*;
- (3) the table in ■ PERG 5.8.5 G identifies several typical recommendations and indicates whether they will be regarded as advice under article 53(1).

5.8.5

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Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53(1) of the *Regulated Activities Order*. This table belongs to ■ PERG 5.8.4 G.

Recommendation	Regulated under article 53(1) or not?
I recommend you take the ABC Insurers motor insurance <i>policy</i>	Yes. This is even the case if ABC Insurers has many different motor insurance policies, as explained in PERG 4.6.6 G. Although PERG 4.6.6 G is about mortgages the same reason applies to insurance.
I recommend that you take out the GHI Insurers life insurance <i>policy</i>	Yes
I recommend that you do not take out the ABC Insurers motor insurance <i>policy</i>	Yes. See the entry in this table for the recommendation to take out the ABC Insurers motor insurance <i>policy</i> .
I recommend that you do not take out the GHI Insurers life insurance <i>policy</i>	Yes
I recommend that you take out either the ABC Insurers motor insurance <i>policy</i> or the DEF Insurers motor insurance <i>policy</i>	Yes
I recommend that you take out either the GHI Insurers life insurance <i>policy</i> or the JKL Insurers life insurance <i>policy</i>	Yes
I recommend that you take out (or do not take out) contents insurance	No, unless a specific insurance <i>policy</i> is implied by the context
I recommend that you take out (or do not take out) life insurance	No, unless a specific insurance <i>policy</i> is implied by the context

Advice given to a person in their capacity as an investor or potential investor

5.8.6

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For the purposes of article 53(1), advice must be given to a *person* in that *person's* capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential

policyholder). So, article 53(1) will not apply where advice is given to *persons* who receive it as:

- (1) an adviser who will use it only to inform advice they give to others; or
- (2) a journalist or broadcaster who will use it only for journalistic purposes.

5.8.7 G Advice will still be covered by article 53(1) even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website). Such advice would, however, be unlikely to be a *personal recommendation* (see ■ PERG 5.8.3AG, ■ PERG 8.24.1G and ■ PERG 8.30BG).

Advice or information

5.8.8 G In the *FCA's* view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of facts or figures.

5.8.9 G In general terms, simply giving information, without making any comment or value judgement on its relevance to decisions which a *person* may make, is not advice. In this respect, it is irrelevant that a *person* may be providing information on a single *contract of insurance* or on two or more. This means that a *person* may provide information on a single *contract of insurance* without necessarily being regarded as giving advice on it. ■ PERG 5.8.11 G has *guidance* on the circumstances in which information can assume the form of advice.

5.8.10 G In the case of article 53(1), information relating to *buying or selling contracts of insurance* may often involve one or more of the following:

- (1) an explanation of the terms and conditions of a *contract of insurance* whether given orally or in writing or by providing leaflets and brochures;
- (2) a comparison of the features and benefits of one *contract of insurance* compared to another;
- (3) the production of pre-purchase questions for a *person* to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *contracts of insurance* with characteristics that appear to meet the *person's* requirements and to which he might wish to give detailed consideration (pre-purchase questioning is considered in more detail in ■ PERG 5.8.15 G to ■ PERG 5.8.19 G (Pre-purchase questioning (including decision trees)));
- (4) tables that compare the costs and other features of different *contracts of insurance*;
- (5) leaflets or illustrations that help *persons* to decide which type of *contract of insurance* to take out; and

- (6) the provision, in response to a request from a *person* who has identified the main features of the type of *contract of insurance* he seeks, of several leaflets together with an indication that all the *contracts of insurance* described in them have those features.

5.8.11

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In the *FCA's* opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a *person* (P) might take the form of advice are given below.

- (1) P may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of a *person*. This may arise where P offers to provide information about *contracts of insurance* that contain features specified by the *person*, but then exercises discretion as to which complying *contract of insurance* to offer to that *person*.
- (2) P may, as a result of going through the sales process, discuss the merits of one *contract of insurance* over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of *buying or selling the contract of insurance* whilst 'advice' in the general sense of the word, is not, in the view of the *FCA*, advice within the meaning of article 53(1). Such advice may, however, amount to *arranging* (for which see ■ PERG 5.6.1 G to ■ PERG 5.6.4 G (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance)).

Advice must relate to the merits (of buying or selling a contract of insurance)

5.8.12

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Advice under article 53(1) relates to the advantages and disadvantages of *buying, selling, subscribing for or underwriting a particular contract of insurance*. It is worth noting that, in this context, '*buying*' and '*selling*' are defined widely under article 3 of the *Regulated Activities Order* (Interpretation). '*Buying*' includes acquiring for valuable consideration, and '*selling*' includes surrendering, assigning or converting rights under a *contract of insurance*.

5.8.13

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The requirements imposed by the *IDD* (see ■ PERG 5.2.5 G (Approach to implementation of the *IMD*)) and the text of article 2.3 *IDD* articles 2.1(1), 2.1(2) and 2. 2 in ■ PERG 5.16.1 G are narrower than the scope of the *Regulated Activities Order* (see ■ PERG 5.2.7 G (Approach to implementation of the *IDD*)). Unlike the *Regulated Activities Order*, they do not relate to the assignment of *contracts of insurance*. This is of relevance to, amongst others, *persons* involved in the 'second-hand' market for *contracts of insurance* such as traded endowment policies and certain viatical instruments (that is, arrangements by which a terminally ill person can obtain value from their *life policy*) (see also ■ PERG 5.6.12 G (Exclusion from article 25(2): transactions to which the arranger is a party)). *Persons* advising on or arranging assignments of these *contracts of insurance* are therefore potentially carrying on *regulated activities* although they may be able to take the benefit of article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) in certain circumstances (see

■ PERG 5.11.9 G to ■ PERG 5.11.12 G (Activities carried on in the course of a profession or non-investment business)).

5.8.14 G Generally speaking, advice on the merits of using a particular *insurance undertaking*, broker or adviser in their capacity as such, does not amount to advice for the purpose of article 53(1). It is not advice on the merits of *buying or selling* a particular *contract of insurance* (unless, in the circumstances, the advice amounts to an implied recommendation of a particular *policy*).

Pre-purchase questioning (including decision trees)

5.8.15 G Pre-purchase questioning involves putting a sequence of questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a *contract of insurance* or other product that meets his needs. A decision tree is an example of pre-purchase questioning. The process of going through the questions will usually narrow down the range of options that are available.

5.8.16 G A key issue for those *firms* proposing to use pre-purchase questioning is whether the specific questioning used may amount to advice. There are two main aspects:

- (1) advice must relate to a particular *contract of insurance* (see ■ PERG 5.8.4 G (Advice must relate to a particular contract of insurance)); and
- (2) the distinction between information and advice (see ■ PERG 5.8.8 G to ■ PERG 5.8.11 G (Advice or information)).

Whether or not pre-purchase questioning in any particular case is advising on *contracts of insurance* will depend on all the circumstances. The process may involve identifying one or more particular *contracts of insurance*. If so, to avoid advising on *contracts of insurance*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the *person* as, assisting the *person* to make his own choice of product which has particular features which the *person* regards as important. The questioner will need to avoid providing any judgement on the suitability of one or more products for that *person* and in this respect should have regard to the factors set out in ■ PERG 5.8.2 G to ■ PERG 5.8.4 G (Advice must relate to a particular contract of insurance) and the table in ■ PERG 5.8.5 G. See also ■ PERG 5.8.12 G to ■ PERG 5.8.14 G (Advice must relate to the merits (of buying or selling a contract of insurance)) for other matters that may be relevant.

5.8.17 G The potential for variation in the form, content and manner of pre-purchase questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the amount of the cover). In the *FCA's* view, this does not itself amount to advising on *contracts of insurance*, if it involves the provision of information rather than advice. There are various possible scenarios, including the following:

- (1) the questioner may go on to identify one or more particular *contracts of insurance* which match features identified by the pre-purchase

questioning; provided these are selected in a balanced and neutral way (for example, they identify all the matching *contracts of insurance* available without making a recommendation as to a particular one) this need not involve advising on *contracts of insurance*; and

- (2) the questioner may go on to advise a *person* on the merits of one particular *contract of insurance* over another; this would be advising on *contracts of insurance*.

5.8.18

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The second type of pre-purchase questioning involves providing questions and answers incorporating opinion, judgement or recommendation. There are various possible scenarios, including the following:

- (1) the pre-purchase questioning may not lead to the identification of any particular *contract of insurance*; in this case, the questioner has provided advice, but it is generic advice and does not amount to advising on *contracts of insurance*; and
- (2) the pre-purchase questioning may lead to the identification of one or more particular *contracts of insurance*; the key issue then is whether the advice can be said to relate to a particular *contract of insurance* (see further ■ PERG 5.8.4 G (Advice must relate to a particular contract of insurance)).

5.8.19

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In the case of ■ PERG 5.8.18G (2) and similar scenarios, the *FCA* considers that it is necessary to look at the process and outcome of pre-purchase questioning as a whole. It may be that the element of advice incorporated in the questioning can properly be viewed as generic advice if it were considered in isolation. But although the actual advice may be generic, the process has ended in identifying one or more particular *contracts of insurance*. The combination of the generic advice and the identification of a particular or several particular *contracts of insurance* to which it leads may well, in the *FCA's* view, cause the questioner to be advising on *contracts of insurance*. Factors that may be relevant in deciding whether the process involves advising on *contracts of insurance* may include:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and is significant;
- (4) the role played by the questioner who guides a *person* through the pre-purchase questions;
- (5) the outcome of the questioning (whether particular *contracts of insurance* are highlighted, how many of them, who provides them, their relationship to the questioner and so on); and
- (6) whether the pre-purchase questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party, and all that the questioner has done is help the *person* understand

what the questions or options are and how to determine which option applies to his particular circumstances.

Medium used to give advice

5.8.20

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With the exception of:

- (1) periodicals, broadcasts and other news or information services (see ■ PERG 5.8.24 G to ■ PERG 5.8.25 G (Exclusion: periodical publications, broadcasts and web-sites)); and
- (2) situations involving an overseas element (see, generally, ■ PERG 5.12 (Link between activities and the United Kingdom) and, in particular, ■ PERG 5.12.8 G (Where is insurance distribution carried on?)),

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53(1).

5.8.21

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Advice can be provided in many ways including:

- (1) face to face;
- (2) orally to a group;
- (3) by telephone;
- (4) by correspondence (including e-mail);
- (5) in a publication, broadcast or web-site; and
- (6) through the provision of an interactive software system.

5.8.22

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Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problem. The same principles apply as with a paper version (see ■ PERG 5.8.15 G to ■ PERG 5.8.19 G (Pre-purchase questioning (including decision trees))).

5.8.23

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Advice in publications, broadcasts and web-sites is subject to a special regime (see ■ PERG 5.8.24 G (Exclusion: periodical publications, broadcasts and web-sites) and ■ PERG 7 (Periodical publications, news services and broadcasts: applications for certification)).

Exclusion: periodical publications, broadcasts and website

5.8.24

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An important exclusion from advising on *contracts of insurance* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies if the principal purpose of the publication or service taken as a whole (including any advertising content) is neither to give advice of a kind mentioned in article 53 (Advising on investments) or article 53A (Advising on regulated mortgage activities) nor to lead or enable *persons* to *buy, sell, subscribe for or underwrite relevant investments* or, as borrower, to enter into or vary the terms of a *regulated mortgage contract*.

5.8.25 **G** This is explained in greater detail, together with the provisions on the granting of certificates by the FCA on the application of the proprietor of a periodical publication or news or information service or broadcast, in ■ PERG 7 (Periodical publications, news services and broadcasts: applications for certification).

5.8.25A **G**

- (1) Where the definition of *advising on investments (except P2P agreements)* is limited to providing *personal recommendations*:
 - (a) the exclusion described in ■ PERG 5.8.24G does not apply; but
 - (b) advice given in a publication issued to the general public, in a broadcast or on a website accessible to the general public will generally not involve a *personal recommendation* and hence will not involve *advising on investments (except P2P agreements)*.
- (2) ■ PERG 7 and ■ PERG 8.30B (Personal recommendations) give more details.

Other exclusions
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5.8.26 **G** The *Regulated Activities Order* contains other limited exclusions which have the effect of preventing certain activities from amounting to advice on *contracts of insurance*. These are referred to in ■ PERG 5.11.8 G (Exclusions applying to more than one regulated activity) to ■ PERG 5.11.16 G (Large risks).

5.9 The Regulated Activities: agreeing to carry on a regulated activity

5.9.1 G Under article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), in addition to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments;*
- (3) *making arrangements with a view to transactions in investments;*
- (4) *assisting in the administration and performance of a contract of insurance; and*
- (5) *advising on investments;*

agreeing to do any of these things is itself a *regulated activity*. In the FCA's opinion, this activity concerns the entering into of a legally binding agreement to provide the services to which the agreement relates. So, a *person* is not carrying on a *regulated activity* under article 64 merely because he makes an offer to do so.

5.9.2 G To the extent that an exclusion applies in relation to a *regulated activity*, 'agreeing' to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order* (Specified activities: general). So, for example, a vet can, without carrying on a *regulated activity*, enter into an agreement with an *insurance undertaking* to distribute marketing literature provided that the vet can rely on the exclusion in article 72C (Provision of information on an incidental basis) in relation to the activity of distributing the literature (see also ■ PERG 5.6.6 G and ■ PERG 5.6.9 G (Exclusion: article 72C (Provision of information on an incidental basis) or article 33B (Provision of information – contracts of insurance) in relation to the activity of distributing the literature (see also ■ PERG 5.6.4AG to ■ PERG 5.6.9G which cover exclusions for the provision of information).



5.10 Renewals

5.10.1

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It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within *insurance distribution activity*. Those considering the need for *authorisation* or variation of their *permissions* will wish to consider whether a process of tacit renewal operates: that is, where a *policyholder* need take no action if they wish to maintain their insurance cover by having their *policy* 'renewed'. This process will typically result in the issue of a new *contract of insurance*, not an extension of the period of the existing one. It may involve the activities of *advising on investments*, *arranging* and *dealing in investments as agent*. More specifically, preparing a 'tacit renewal' letter on behalf of an *insurance undertaking* is likely to amount to *arranging*. Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments (except P2P agreements)* (under article 53(1) of the *Regulated Activities Order*). If the contract takes effect on the date stipulated in the renewal letter, a contract is concluded with the effect that the letter writer may be *dealing in investments as agent*. The process may also involve a *regulated activity* under article 64 (Agreeing to carry on a regulated activity).



5.11 Other aspects of exclusions

- 5.11.1 **G** This part of the *guidance* deals with:
- (1) exclusions which are disapplied where the *regulated activity* relates to *contracts of insurance*;
 - (2) exclusions which are disapplied where a *person* carries on *insurance distribution*; and
 - (3) the following exclusions applying to more than one *regulated activity*:
 - (a) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business));
 - (b) activities carried on by a provider of relevant goods or services (article 72B (Activities carried on by a provider of relevant goods or services));
 - (c) large risks (article 72D (Large risks contracts where risk situated outside the EEA));
 - (d) activities carried on by *firms* with a *Part 4A permission to manage a UCITS or manage an AIF* (article 72AA (Managers of UCITS and AIFs));
 - (e) activities carried on by a *local authority* (article 72G); and
 - (f) activities carried on by a *person* acting as an insolvency practitioner (article 72H).

- 5.11.2 **G** Several exclusions that would have the effect of restricting the scope of the *regulated activities* referred to in this *guidance* are disapplied or modified in order to properly implement *IDD*.

Exclusions disapplied where activities relate to contracts of insurance

- 5.11.3 **G** The following exclusions do not apply if they concern transactions relating to *contracts of insurance*:
- (1) *dealing in investments as agent* with or through *authorised persons* (article 22 of the Regulated Activities Order (Deals with or through authorised persons));

- (2) *arranging* transactions to which the *arranger* is to be a party, where the *arranger* enters into or is to enter into the transaction:
 - (a) as agent for another *person*; or
 - (b) as *principal*, unless the *arranger* is the only *policyholder* or will, as a result of the transaction, become the only *policyholder* (article 28 (Arranging transactions to which the arranger is a party));
- (3) arranging deals with or through *authorised persons* (article 29 (Arranging deals with or through authorised persons));
- (4) introducing (article 33 (Introducing));
- (5) activities carried on in connection with the sale of goods and supply of services (article 68 (Activities carried on in connection with the sale of goods and supply of services));
- (6) *groups and joint enterprises* (article 69 (Groups and joint enterprises)) (see ■ PERG 5.11.6 G); and
- (7) activities carried on in connection with the sale of a *body corporate* (article 70 (Activities carried on in connection with the sale of a body corporate)).

5.11.4

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The restrictions placed on the exclusions listed in ■ PERG 5.11.3 G have the following effects:

- (1) *Unauthorised persons* who:
 - (a) introduce clients or customers to an independent financial adviser with a view to a transaction; or
 - (b) deal as agent on behalf of their clients or customers with or through an *authorised person*; or
 - (c) arrange for their clients or customers to enter into a transaction with or through an *authorised person*;

will not be able to rely on articles 29 or 33 to avoid the need for *authorisation* where the transaction relates to a *contract of insurance*.
- (2) *Unauthorised persons* may, however, be able to rely on the exclusions for the provision of information in article 33B or provision of information on an incidental basis in article 72C to avoid the need for *authorisation* (see ■ PERG 5.6.4AG to ■ PERG 5.6.9G which cover exclusions for the provision of information).
- (3) *Authorised persons* who themselves introduce clients or customers to others for the purposes of *buying* or *selling* any kind of *contract of insurance* are likely to require *permission* to carry out *arranging activities*, as neither article 33 nor generally, article 72C (see ■ PERG 5.6.5 G to ■ PERG 5.6.9 G (Exclusion: article 72C (Provision of information on an incidental basis))) will apply. Article 33B could apply, but the *authorised person* would need to be merely providing information and taking no additional steps to assist in the conclusion of the *contract of insurance*.

- 5.11.5 **G** *Insurance undertakings* are referred to ■ MIPRU 5 (Insurance distributors and home finance providers using insurance distribution or home finance mediation services) as regards their obligations relating to the use of intermediaries generally.
- 5.11.6 **G**
- (1) The exclusion for *groups* and *joint enterprises* in article 69 of the *Regulated Activities Order* (Groups and joint enterprises) does not apply to transactions relating to *contracts of insurance*. This will affect a *company* providing services for:
 - (a) other members of its *group*; or
 - (b) other participants in a *joint enterprise* of which it is a participant.
 - (2) Such *companies* might typically provide risk or treasury management or administration services which may include *regulated activities* relating to a *contract of insurance*. If so, such companies will need *authorisation* or exemption if they conduct the activities by way of business (see ■ PERG 5.4 (The business test) generally and (3) and (4)). This is unless another exclusion applies.
 - (3) In the *FCA's* view, particular issues arise in applying the 'by way of business' test to group companies. Recital 11 of the *IDD* states that the Directive should apply to *persons* whose activity consists in providing insurance or reinsurance distribution services to third parties. This Recital 11 suggests that the Directive is intended to apply only where the service is provided to a third party. The expression 'third party' is not defined in the Directive. The *FCA* considers that a group *company* that is providing services solely for the benefit of other group *companies* would not normally be regarded as providing services to a third party. The group *company* also needs to be receiving remuneration for the activities (see ■ PERG 5.4.2G(1)). The *FCA* also considers that a group *company* providing services solely for the benefit of other group *companies* should not normally be regarded as satisfying the requirement that it be remunerated for providing insurance distribution services to third parties. Were a group *company* to be remunerated other than by another group *company*, however, the situation may be different. For example, if the group *company* receives commission from an insurer or broker, the fact would tend to suggest that the *company* has been rewarded for providing a service to the insurer or broker. In the *FCA's* view, it is appropriate to apply this principle to a *group* as defined in section 421 (Group) of the *Act*.
 - (4) The *FCA* considers that similar principles to those applied to a group *company* in (2) may be applied to the participants in a *joint enterprise*. This would be where one participant in the *joint enterprise* is providing services solely for the benefit of another participant and for the purposes of the *joint enterprise* and who provides insurance distribution services to one or more participants for the purposes of or in connection with the *joint enterprise*.

Exclusions disappplied in connection with insurance distribution

- 5.11.7 **G** Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disappplies certain exclusions where a *person*, for remuneration, takes up or pursues *insurance distribution* or *reinsurance distribution* (as defined in

articles 2.1(1), 2.1(2) and 2.2 of the *IDD*) and ■ PERG 5.16.2G) in relation to a risk or commitment located in an *EEA State*. The relevant exclusions which are disapplied are:

- (1) arrangements in connection with lending on the security of insurance policies (article 30 of the *Regulated Activities Order* (Arranging transactions in connection with lending on the security of insurance policies));
- (2) activities carried on by trustees, nominees and personal representatives (article 66 (Trustees, nominees and personal representatives)); and
- (3) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business)) (This exclusion is considered in further detail in ■ PERG 5.11.9 G to ■ PERG 5.11.12 G (Activities carried on in the course of a profession or non-investment business)).

Exclusions applying to more than one regulated activity

5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. Five exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a sixth, *overseas persons*, in ■ PERG 5.12 (Link between activities and the United Kingdom).

Activities carried on in the course of a profession or non-investment business

5.11.9 G Article 67 excludes from the activities of *dealing as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments*, any activity which:

- (1) is carried on in the course of carrying on any profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*; and
- (2) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

In the *FCA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business.

5.11.10 G Although the article 67 exclusion is disapplied (by article 4(4A) of the *Regulated Activities Order* (Specified investments: general)) when a *person* takes up or pursues *insurance distribution* or *reinsurance distribution* as defined by articles 2.1(1), 2.1(2) and 2.2 of the *IDD*, there may be cases where a *person* is not carrying on activities that amount to *insurance distribution*. For example, where a *person's* activities amount simply to the

provision of information on an incidental basis in the context of another professional activity, these may fall outside the scope of article 2.1(1) and 2.1(2) of the *IDD* (see ■ PERG 5.16.2G) and the exclusion in article 67 may then operate to exclude these activities. Also, it is possible that a professional *person's* activities may not amount to a *regulated activity* at all. For example, a doctor who provides a medical report to an *insurer* may be regarded as making arrangements with a view to providing an expert medical opinion rather than with a view to transactions in *contracts of insurance*. In such cases, article 67 will not be needed.

5.11.11 G Article 67 may also apply to activities relating to assignments of insurance *policies*, as, in the *FCA's* view, article 2.1(1) of the *IDD* applies essentially to the creation of new *contracts of insurance* and not the assignment of rights under existing *policies*. As such, where a solicitor or licensed conveyancer arranges an assignment of a *contract of insurance*, the exclusion in article 67 remains of potential application. For similar reasons, trustees advising on or arranging assignments of *contracts of insurance* may, in certain circumstances, be able to rely on the exclusions in article 66 of the *Regulated Activities Order*.

5.11.12 G For article 67 to apply in these cases, in addition to ■ PERG 5.11.9G (1) and ■ (2), the activity in question must not be remunerated separately from other services (article 67(2) of the *Regulated Activities Order*).

Activities carried on by a provider of relevant goods or services

5.11.13 G Article 72B (see also ■ PERG 5.3.7 G (Connected contracts of insurance)) may be of relevance to *persons* who supply non-motor goods or services or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. In the *FCA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on *insurance distribution activities* in relation to some *contracts of insurance* that satisfy the conditions of the article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek *authorisation* or become an *appointed representative* to be permitted to sell the latter contracts. The exclusion applies to *insurance distribution activities* when carried on in relation to 'connected contracts of insurance'. In broad terms, a 'connected contract of insurance' is a *contract of insurance* which:

- (1) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order* (Interpretation));
- (2) [deleted]
- (3) has an annual *premium* of:
 - (a) €600 euro or less (calculated on a pro rata annual basis); or

- (b) 200 euro or less, where the *contract of insurance* is 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;
- (4) covers:
 - (a) the risk of breakdown, loss of, or damage to, non-motor goods supplied by the provider;
 - (b) travel risks; or
 - (c) the risk of the non-use of services;
- (5) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract); and
- (6) is complementary to the non-motor goods being supplied or service being provided by the provider.
- (7) [deleted]

5.11.13A G

- (1) There are two types of travel risks covered by ■ PERG 5.11.13G (4)(b). The first type covers damage to, or loss of, baggage and other risks linked to the travel booked with the provider where that travel relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business.
- (2) "Small business" means 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 if the small business is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section, within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group. 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 the amounts so derived.
- (3) The second type of travel risk is damage to, or loss of, baggage and other risks linked to the hire from the insurance provider of an aircraft, vehicle or vessel which does not provide sleeping accommodation.
- (4) ■ PERG 5.11.13G (4)(a) does not apply to the hire of an aircraft, vehicle or vessel but does cover hire purchase and similar agreements.

5.11.14 G

In the FCA's view, the liability risks referred to in ■ PERG 5.11.13G (5) cover risks in relation to liabilities that the *policyholder* might have to others (that is, third party claims). Many *policies* will provide this sort of cover and so fall outside the scope of the exclusion. For example, a *policy* that covers the cost of unauthorised calls made when a mobile telephone is stolen includes 'liability risks' and would not be a 'connected contract of insurance'. By contrast, travel *policies* which provide cover in respect of the *policyholder's*

personal liability while travelling may fall within the exclusion by virtue of ■ PERG 5.11.13G (5), where sold as part of a package by event organisers.

5.11.15 **G** [deleted]

Large risks

5.11.16 **G** Article 72D (Large risks contracts where risk situated outside the EEA) provides an exclusion for large risks situated outside the *EEA*. Broadly speaking, these are risks relating to:

- (1) railway rolling stock, aircraft, ships, goods in transit, aircraft liability and shipping liability;
- (2) credit and suretyship where relating to the *policyholder's* commercial or professional liability;
- (3) land vehicles, fire and natural forces, property damage, motor vehicle liability where the *policyholder* is a business of a certain size.

For a fuller definition of *contracts of large risks* see the definition in the *Glossary*.

Managers of UCITS and AIFs

5.11.17 **G** Article 72AA of the *Regulated Activities Order* (Managers of UCITS and AIFs) contains an exclusion relating to *firms* with a *Part 4A permission* to *manage a UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G).

5.11.18 **G** Article 72G (Local authorities) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance* and *advising on investments* any activity carried on by a *local authority* which relates to a *contract of insurance* which is not a *life policy*.

5.11.19 **G** Article 72H (Insolvency Practitioners) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance* and *advising on investments* any activity carried on by a *person* acting as an insolvency practitioner.



5.12 Link between activities and the United Kingdom

Introduction

5.12.1 **G** Section 19 of the Act (The general prohibition) provides that the requirement to be *authorised* under the Act only applies in relation to *regulated activities* which are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But, when there is a cross-border element, for example because a *customer* is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may need careful consideration. ■ PERG 5.15.8 G (Flow chart: am I carrying on regulated activities in the United Kingdom?) has a flow chart setting out the questions a *person* needs to consider in determining whether or not his *regulated activities* are carried on 'in the *United Kingdom*'.

5.12.2 **G** Even if a *person* concludes that he is not carrying on a *regulated activity* in the *United Kingdom*, he will need to ensure that he does not contravene other provisions of the Act that apply to *unauthorised persons*. These include the controls on *financial promotion* (section 21 (Financial promotion) of the Act) (see ■ PERG 8 (Financial promotion and related activities)), and on giving the impression that a *person* is *authorised* (section 24 (False claims to be authorised or exempt)).

5.12.3 **G** The table in ■ PERG 5.12.4 G is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of *insurance distribution activities* in or into the *United Kingdom* for remuneration.

5.12.4 **G** Table Territorial issues relating to overseas insurance intermediaries carrying on *insurance distribution activities* in or into the *United Kingdom*

	Needs Part 4A permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
Registered EEA-based intermediary with UK branch (registered office or head office in another EEA State)	No	Yes	No

	Needs Part 4A permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
Registered EEA-based intermediary with no UK branch providing cross-border services	No	Yes	Potentially available [see Note]
Third country intermediary operating from branch in the UK	Yes	No	No
Third country intermediary providing services in (or into) the UK	Yes unless overseas persons exclusion applies	No	Potentially available

This does not, however, affect the *firm's authorisation* under Schedule 3 to the Act (see PERG 5.12.9 G to PERG 5.12.10 G (Passporting)).

For EEA-based intermediaries this table assumes that the *insurance distribution activities* are within the scope of the IDD.

Where are insurance distribution activities carried on?

- 5.12.5 G *Persons carrying on insurance distribution activities from a registered office or head office in the United Kingdom will clearly be carrying on regulated activities in the United Kingdom. However, a person may be considered to be carrying on regulated activities in the United Kingdom even where not carrying on the activity from a registered office or head office in the United Kingdom. This is explained further in ■ PERG 5.12.6 G to ■ PERG 5.12.8 G.*

- 5.12.6 G In determining the location of an activity, and hence whether it is carried on in the *United Kingdom*, various factors need to be taken into account in turn, notably:
 - (1) section 418 of the Act (Carrying on regulated activities in the United Kingdom);
 - (2) the nature of the activity; and
 - (3) the *overseas persons* exclusion (see ■ PERG 5.12.9 G to ■ PERG 5.12.10 G (Overseas persons)).

- 5.12.7 G Section 418 of the Act extends the meaning that 'carry on regulated activity in the United Kingdom' would normally have by setting out additional cases in which a *person* who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is to be regarded as doing so. Each of the following cases thus amounts to carrying on a *regulated activity* in the *United Kingdom*:
 - (1) where a UK-based *person* carries on a *regulated activity* in another EEA State in the exercise of rights under a *Single Market Directive*;

- (2) where a *UK-based person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*;
- (3) where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment maintained by him in the *United Kingdom*; and
- (4) where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an establishment in the *United Kingdom*.

In each of these cases it is irrelevant where the *person* with whom the activity is carried on is situated.

5.12.8 G Otherwise, where the cases in ■ PERG 5.12.7G (1) do not apply, it is necessary to consider further the nature of the activity in order to determine where *insurance distribution* is carried on. *Persons* that arrange *contracts of insurance* will usually be considered as carrying on the activity of *arranging* in the location where these activities take place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.

Overseas persons

5.12.9 G Article 72 of the *Regulated Activities Order* (Overseas persons) provides a potential exclusion for *persons* with no permanent place of business in the *United Kingdom* from which *regulated activities* are conducted or offers to conduct *regulated activities* are made. Where these *persons* carry on *insurance distribution activities* in the *United Kingdom*, they may be able to take advantage of the exclusions in article 72 of the *Regulated Activities Order*. In general terms, these apply where the *overseas person* either:

- (1) deals or arranges deals with or through authorised or *exempt persons* only; or
- (2) enters into deals with (or on behalf of) a *person* in the *United Kingdom* or gives advice on investments in the *United Kingdom*, in each case as a result of a 'legitimate approach'.

A 'legitimate approach', for the purposes of (2), is one that results from an unsolicited approach by a *person* (for example, a *customer*) or otherwise is a result of an approach by, or on behalf of, an *overseas person* which complies with the restriction on *financial promotion* under section 21 of the *Act* (see ■ PERG 8.3.1 G (Financial promotion)).

5.12.10 G The *overseas person* exclusion is available to *persons* who do not have a permanent place of business in the *United Kingdom* and so is of relevance to third country intermediaries (that is, non *EEA*-based intermediaries) who carry on *insurance distribution activities* in, or into, the *United Kingdom* (for example with or through authorised insurance brokers and insurance *undertakings* operating in the Lloyd's market).

How should persons be authorised?

5.12.11 **G** UK-based persons must obtain *Part 4A permission* in relation to their insurance distribution activities in the United Kingdom as one of the following:

- (1) a *body corporate* whose registered office is situated in the United Kingdom; or
- (2) a *partnership* or unincorporated association whose head office is situated in the United Kingdom; or
- (3) an individual (that is, a sole trader) whose residence is situated in the United Kingdom.

The United Kingdom will, in each case, be the *Home State* for the purposes of the *IDD*

for insurance or reinsurance intermediaries (see further in connection with the *E-Commerce Directive* in ■ PERG 5.12.15 G to ■ PERG 5.12.17 G (*E-Commerce Directive*)).

5.12.12 **G** Non-UK-based persons wishing to carry on insurance distribution activities in the United Kingdom must:

- (1) qualify for *authorisation* by exercising passport rights (see section 31 (Authorised persons) and schedule 3 (EEA passport rights) to the Act and ■ PERG 5.12.13 G to ■ PERG 5.12.14 G (Passporting)); or
- (2) make use of the *overseas persons* exclusion (which then has the effect that activities are deemed not to be *regulated activities* carried on in the United Kingdom); or
- (3) seek *Part 4A permission*.

Passporting

5.12.13 **G** The effect of the *IDD* is that any EEA-based insurance intermediaries doing business within the Directive's scope must first be registered in their home EEA State before carrying on insurance distribution in that EEA State or other EEA States. For these purposes, an EEA-based insurance intermediary is either:

- (1) a legal person with its registered office or head office in an EEA State other than the United Kingdom; or
- (2) a natural person resident in an EEA State other than the United Kingdom.

Registered EEA-based insurance intermediaries wishing to establish branches in the United Kingdom or provide services on a cross-border basis into the United Kingdom can do so by notifying their Home State regulator which in turn notifies the FCA. This enables the intermediary to acquire passporting rights for business within the Directive's scope (so excluding insurance distribution activities relating to *connected contracts* or *connected travel insurance contracts*) under Schedule 3 to the Act.

5.12.14 **G** On the other hand, non-EEA-based insurance intermediaries wishing to establish a branch in the *UK* for the purpose of carrying on *insurance distribution activities* may only do so with *Part 4A permission*.

E-Commerce Directive

5.12.15 **G** The *E-Commerce Directive* removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires *EEA States* to impose certain requirements on the outward provision of such services and to lift them from inward providers. The *E-Commerce Directive* defines an e-commerce service (termed an *information society service*) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television.

5.12.16 **G** The *E-Commerce Directive* does not remove the *IDD* requirement for persons taking up or pursuing *insurance distribution* for remuneration to be registered in their *Home State*. Nor does it remove the requirement for *EEA*-based intermediaries to acquire passporting rights in order to establish branches in the *United Kingdom* (see ■ PERG 5.12.7 G) in relation to *electronic commerce activity* carried on from an establishment in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* where the relevant activity is carried on in the *United Kingdom*. An example of *electronic commerce activity* provided on a cross-border basis into the *United Kingdom* could be a recommendation in a (solicited) e-mail from an *EEA*-based intermediary to a *UK*-based customer to *buy* a particular *contract of insurance*.

5.12.17 **G** Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance distribution services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to *IDD* registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance distribution services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin.



5.13 Appointed representatives

What is an appointed representative?

5.13.1 **G** Section 39 of the Act (Exemption of appointed representatives) exempts *appointed representatives* from the need to obtain *authorisation* (or, in relation to an *appointed representative* with a *limited permission*, provides that sections 20(1) and (1A) and 23(1A) of the Act do not apply in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*). An *appointed representative* is a *person* who is party to a contract with an *authorised person* which permits or requires him to carry on certain *regulated activities* (see *Glossary* for full definition). ■ SUP 12 (Appointed representatives) contains *rules* and *guidance* relating to *appointed representatives*.

5.13.2 **G** Unless a *person* has only a *limited permission* for certain *credit-related regulated activities*, a *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the Act (Exemption of appointed representatives)).

Business for which an appointed representative is exempt

5.13.3 **G** An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. The *regulated activities* set out in the table in ■ PERG 5.13.4 **G** are included in those regulations. As set out in the table, the *insurance distribution activities* that can be carried on by an *appointed representative* differ depending on the type of *contracts of insurance* in relation to which the activities are carried on.

5.13.4 **G** Insurance insurance distribution activities activities able to be carried on by an appointed representative. This table belongs to ■ PERG 5.13.3 **G**.

Type of contract of insurance	Regulated activities an appointed representative can carry on
<i>General insurance contract</i>	<ul style="list-style-type: none"> • <i>dealing in investments as agent;</i> • <i>arranging;</i> • <i>assisting in the administration and performance of a contract of insurance;</i> • <i>advising on investments; and</i> • <i>agreeing to carry on these regulated activities.</i>

Type of contract of insurance	Regulated activities an appointed representative can carry on
<i>Pure protection contract</i>	<ul style="list-style-type: none"> • <i>dealing in investments as agent</i> (but only where the contract is not a <i>long-term care insurance contract</i>); • <i>arranging</i>; • <i>assisting in the administration and performance of a contract of insurance</i>; • <i>advising on investments</i>; and • agreeing to carry on these <i>regulated activities</i>.
<i>Life policy</i>	<ul style="list-style-type: none"> • <i>arranging</i>; • <i>assisting in the administration and performance of a contract of insurance</i>; • <i>advising on investments</i>; and • agreeing to carry on these <i>regulated activities</i>

Becoming an appointed representative

5.13.5 G A person may wish to become an *appointed representative* in relation to one or more of the *insurance distribution activities* specified in the *Appointed Representatives Regulations* (see table in ■ PERG 5.13.4 G). If so, the person must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for them. ■ SUP 12.4 (What must a firm do when it appoints an appointed representative or an EEA tied agent?) and ■ SUP 12.5 (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not be able to commence an *insurance distribution activity* until that *appointed representative* is included on the *Financial Services Register* for such activities.

Persons who are already appointed representatives

5.13.6 G Where a person (A), who is already an *appointed representative*, proposes to start to carry on any *insurance distribution activities*, A will need to consider the following matters.

- (1) A must become *authorised* if the *insurance distribution activities* that A proposes to carry on include activities that do not fall within the table in ■ PERG 5.13.4 G (for example, *dealing as agent* in *pure protection contracts*). The Act does not permit any person to be exempt for some activities and *authorised* for others (although a person with only a *limited permission* for certain *credit-related regulated activities* may also be an *appointed representative* for other *regulated activities* specified in the *Appointed Representatives Regulations* (see ■ SUP 12.2.3 G)). A will, therefore, need to apply for *permission* to cover all the *regulated activities* that A proposes to carry on.
- (2) If A proposes to carry on *regulated activities* that are specified in the *Appointed Representatives Regulations* in relation to *contracts of insurance* (see the table in ■ PERG 5.13.4 G), A may be able to do so as an *appointed representative* bearing in mind the following.
 - (a) A will need to be appointed by an *authorised person* prepared to accept responsibility for A's *insurance distribution activities* when

acting for the *authorised person*. The *authorised person* must have *permission* to carry on these *regulated activities*.

- (b) If these *insurance distribution activities* are to be carried on for the same *authorised person* who has already appointed A for other *regulated activities*, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract will be required (see ■ SUP 12.5.6A R).
- (c) A cannot commence an *insurance distribution activity* until A is included on the *Financial Services Register* as carrying on such activities.
- (d) An *appointed representative* would be entitled to have more than one *principal* subject to certain restrictions. In relation to *non-investment insurance contracts* (*general insurance contracts* and *pure protection contracts*), an *appointed representative* may have an unlimited number of *principals*. In relation to *regulated mortgage contracts* and *designated investment business*, an *appointed representative* is limited in the number of *principals* he may have. In any case where an *appointed representative* has multiple *principals*, those *principals* are required to enter into a multiple- *principal* agreement (see ■ SUP 12.4.5D G to ■ SUP 12.4.5G G (Appointment of an appointed representative (other than an introducer appointed representative))).
- (e) If A's activities are limited to introducing, A should consider the specific *Handbook* provisions relating to *introducer appointed representatives* (see ■ SUP 12 (What must a firm do when it appoints an appointed representative or an EEA tied agent?)).



5.14 Exemptions

Professionals

- 5.14.1** G *Professional firms* (broadly firms of solicitors, accountants and actuaries) may carry on *insurance distribution activities* in the course of their professional activities. *Exempt professional firms* carrying on *insurance distribution activities* may continue to be able to use the *Part XX exemption* to avoid any need for *authorisation*. ■ PROF 2 (Status of exempt professional firm) contains *guidance* on the *Part XX exemption*. They will, however, need to be shown on the *Financial Services Register* as carrying on *insurance distribution activities*, in order to benefit from this exemption. The task of registration is the responsibility of the *designated professional bodies* who will need to inform the *FCA* both of member firms carrying on *insurance distribution activities* and individuals within firms' management responsible for these activities.
- 5.14.2** G *Professional firms* with practices that involve acting for claimants in litigation against *insurance undertakings* are likely to be carrying on the *regulated activity of assisting in the administration and performance of a contract of insurance*. *Exempt professional firms* whose practices contain a material element of such activity should consider whether they can continue to take advantage of the *Part XX exemption* to avoid any need for *authorisation*, having regard to the relevant provisions of the *Act*, in particular section 327 (Exemption from the general prohibition) and the *guidance* in ■ PROF 2.1.14 G (Exempt regulated activities).
- 5.14.3** G *Professional firms* should be aware of the disapplication of the exclusions for trustees (article 66) and activities carried on in the course of a profession or non-investment business (article 67) outlined in ■ PERG 5.11.7 G (Exclusions disappplied in connection with insurance distribution) where their activities would amount to *insurance distribution*. Where they do not, they will still be able to rely upon article 67. Otherwise, the *Non-Exempt Activities Order* imposes limitations on the extent to which *professional firms* can give advice to individuals. In particular, a *professional firm* cannot make a recommendation to a private client to buy a life policy, unless it is endorsing a corresponding recommendation given to the *client*. The recommendation it endorses must be one given by an *authorised person* permitted to advise on *life policies*, or an *exempt person* for these purposes. No such restrictions apply, however, in relation to *contracts of insurance* other than *life policies*.
- 5.14.4** G As indicated in ■ PERG 5.6.8 G, the article 72C exclusion (Provision of information on an incidental basis) is potentially available to unauthorised *professional firms* including *exempt professional firms*. This may be relevant

to *professional firms* arranging *contracts of insurance* for *clients* on an individual basis.

Other exemptions

5.14.5

G

In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance distribution activities* that do not relate to *life policies*:

- (1) [deleted]
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 but not their subsidiaries;
- (3) registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 but not their subsidiaries;
- (4) the Office of Tenants and Social Landlords (known as the Tenant Services Authority);
- (4A) the Homes and Communities Agency;
- (5) Scottish Homes; and
- (6) The Northern Ireland Housing Executive.



5.15 Illustrative tables

5.15.1 **G** [deleted]

5.15.2 **G** [deleted]

5.15.3 **G** The table in **■ PERG 5.15.4 G** is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see **■ PERG 5.1.6 G** on the effect of this *guidance*). References in this table to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see **■ PERG 5.4**). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where the intermediary is not the *policyholder*. Also, that this table does not provide an exhaustive list of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the *Regulated Activities Order* and their applicability see generally **■ PERG 5.3.7 G** to **■ PERG 5.3.8 G**, **■ PERG 5.6.4AG** to **■ PERG 5.6.23 G**, **■ PERG 5.7.7 G**, **■ PERG 5.8.24 G** to **■ PERG 5.8.26 G**, **■ PERG 5.11**, **■ PERG 5.12.9 G** to **■ PERG 5.12.10 G**, **■ PERG 5.13** and **■ PERG 5.14**. This table is referred to in **■ PERG 5.7.5 G** (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4 **G** Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
Passive display of information -for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see PERG 5.6.4 G).
Providing a customer with contact details or information about a broker / <i>insurance undertaking</i> (whether by phone, fax, e-mail, face-to-face or any	Yes, but articles 33B or 72C may be available.	This will constitute making arrangements under article 25(2). But, the exclusions in articles 33B or 72C will apply if all the intermediary does is supply informa-

Type of activity	Is it a regulated activity?	Rationale
other means of communication)		tion to the customer and the relevant conditions of those exclusions are otherwise met (see PERG 5.6.4AG to PERG 5.6.9 G). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular <i>policy</i> (see PERG 5.8.4 G), in which case articles 33B and 72C would not be available.
Providing an <i>insurance undertaking</i> /broker with contact details of customer	Yes, but article 33B may be available.	This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 33B applies to the provision of information about a potential policyholder to an <i>insurance undertaking</i> or an insurance or reinsurance intermediary, and so may apply here if the relevant conditions are met. It will only apply if the provider of the customer information does not take any step other than providing the information to assist in the conclusion of a <i>contract of insurance</i> .
Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)	Yes.	This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). Article 33B does not apply because the information provided to the intermediary doesn't relate to a potential policyholder, and isn't provided to a policyholder. Article 72C is not available because this activity does not involve provision of information to the <i>pol</i>

Type of activity	Is it a regulated activity?	Rationale
<p>Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)</p>	<p>Yes.</p>	<p><i>icyholder</i> or potential <i>policyholder</i> only.</p> <p>This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular <i>policy</i> and could involve <i>advising on investments</i>. Article 33B is unlikely to apply, as the telemarketing company is likely to be actively persuading the customer rather than merely providing information. Article 72C will not be available where the provision of information is more than incidental to the telemarketing company's main business. Articles 33B and 72C will not be available where the telemarketing company is <i>advising on investments</i>.</p>
<p>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</p>		
<p>Discussion with client about need for insurance generally/need to take out a particular type of insurance</p>	<p>Generally, no. Articles 33B or 72C available if needed.</p>	<p>Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i>. If so, articles 33B or 72C might be of application (see PERG 5.6.5 G to PERG 5.6.9 G).</p>
<p>Advising on the level of cover needed</p>	<p>Generally, no. Articles 33B or 72C available if needed.</p>	<p>Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see PERG 5.8.3 G). If so, articles 33B or 72C might</p>

Type of activity	Is it a regulated activity?	Rationale
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)	Yes. Subject to article 72 C exclusion where available.	be of application (see PERG 5.6.4AG to PERG 5.6.9 G). This will constitute <i>arranging</i> although article 72C may be of application (see PERG 5.6.4AG to PERG 5.6.9 G). If there is no express or implied recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53(1) (see PERG 5.8.15 G to PERG 5.8.19 G).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments (except P2P agreements)</i> (see PERG 5.8.8 G (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments (except P2P agreements)</i> , article 72C may be of application (see PERG 5.6.5 G to PERG 5.6.9 G), and where information is provided by a professional in the course of a profession, article 67 may apply (see PERG 5.11.9 G to PERG 5.11.12 G). Article 33B will not be available where this involves taking steps other than the provision of information.
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see PERG 5.8.4 G to PERG 5.8.5 G).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see PERG 5.8.4 G to PERG 5.8.5 G).
Advice by journalists in	Generally, no because	Article 54 provides an

Type of activity	Is it a regulated activity?	Rationale
newspapers, broadcasts etc.	of the article 54 exclusion.	exclusion for advice given in newspapers etc (see PERG 5.8.24 G to PERG 5.8.25 G).
Giving advice to a customer in relation to <i>buying</i> a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product	Not necessarily but depends on the circumstances.	Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C, and article 33B, exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see PERG 5.11.9 G to PERG 5.11.12 G) and article 72C (see PERG 5.6.4AG to PERG 5.6.9 G) may be of application. Article 33B could also apply, depending on the type of information provided.
Helping a potential <i>policyholder</i> fill in an application form	Yes.	This activity amounts to <i>arranging</i> . Articles 33B and 72C will not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.4AG to PERG 5.6.9 G).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service provider that receives and processes proposal forms)	Yes.	This amounts to <i>arranging</i> . Articles 33B and 72C do not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.4AG to PERG 5.6.9 G).
Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Articles 33B and 72C do not apply because this activity goes beyond the mere provision of informa-

Type of activity	Is it a regulated activity?	Rationale
tion (see PERG 5.6.4AG to PERG 5.6.9 G).		
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
Negotiating terms of <i>policy</i> on behalf of a customer with the <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> (see PERG 5.6.2 G).
Negotiating terms of <i>policy</i> on behalf of <i>insurance undertaking</i> with the customer and signing proposal form on his behalf	Yes.	These activities amount to both <i>arranging</i> and <i>dealing in investments as agent</i> .
Concluding a <i>contract of insurance</i> on insurance company's behalf, for example, motor dealer who has authority to conclude insurance contract on behalf of <i>insurance undertaking</i> when <i>selling</i> a car	Yes.	A <i>person</i> carrying on this activity will be <i>dealing in investments as agent</i> . He will also be <i>arranging</i> (as the article 28 exclusion only applies in the limited circumstances envisaged under article 28(3)) (see PERG 5.6.12 G).
Agreeing, on behalf of a prospective <i>policyholder</i> , to buy a <i>policy</i> .	Yes.	A <i>person</i> who, with authority, enters into a <i>contract of insurance</i> on behalf of another is <i>dealing in investments as agent</i> under article 21, and will also be <i>arranging</i> .
Providing compulsory insurance as a secondary purchase	Yes. It will amount to <i>dealing in investments as agent</i> or <i>arranging</i> .	The fact that the insurance is secondary to the primary product does not alter the fact that arranging the package involves <i>arranging</i> the insurance.
COLLECTION OF PREMIUMS		
Collection of cheque for premium from the customer at the pre-contract stage.	Yes (as part of <i>arranging</i>).	This activity is likely to form part of <i>arranging</i> . But the mere collection/receipt of premiums from the customer is unlikely, without more, to amount to <i>arranging</i> .
Collection of premiums at post-contract stage	No.	The mere collection of premiums from <i>policyholders</i> is unlikely, without more, to amount to <i>assisting in the administration and performance of a contract of insurance</i> .
MID-TERM ADJUSTMENTS AND ASSIGNMENTS		

Type of activity	Is it a regulated activity?	Rationale
Solicitors or licensed conveyancers discharging client instructions to assign <i>contracts of insurance</i> .	Not where article 67 applies.	As the assignment of rights under a <i>contract of insurance</i> (as opposed to the creation of new <i>contracts of insurance</i>) does not fall within the <i>IMD</i> , article 67 is of potential application (see PERG 5.11.9 G to PERG 5.11.12 G).
Making mid-term adjustments to a <i>policy</i> , for example, property manager notifies changes to the names of the leaseholders registered as “interested parties” in the <i>policy</i> in respect of the property.	Yes.	Assuming the freeholder (as <i>policyholder</i>) is obliged under the terms of the <i>policy</i> to notify the <i>insurance undertaking</i> of changes to the identity of the leaseholders, the property manager is likely to be <i>assisting in the administration and the performance of the contract of insurance</i> .
TRADED ENDOWMENT POLICIES (“TEPs”)		
Making introductions for the purposes of <i>selling</i> TEPs	Yes, unless article 72C applies.	Making introductions for these purposes is <i>arranging</i> unless article 72C applies (see PERG 5.6.5 G to PERG 5.6.9 G). The exclusions in article 29 (Arranging deals with or through authorised persons) and 33 (Introducing) no longer apply to <i>arranging contracts of insurance</i> .
Market makers in TEPs	Yes, although the exclusion in article 28 may apply.	Unauthorised market makers can continue to make use of the exclusions in articles 15 (Absence of holding out etc.) and 16 (Dealing in contractually based investments), where appropriate. In order to avoid the need for <i>authorisation</i> in respect of <i>arranging</i> they may be able to rely upon article 28 (see PERG 5.6.12 G).
ASSISTING POLICYHOLDER WITH MAKING A CLAIM		
Merely providing information to the in-	No.	Of itself, this is likely to amount to assisting in

Type of activity	Is it a regulated activity?	Rationale
<p>...sured to help him complete a claim form</p>		<p>the administration but not the performance of a <i>contract of insurance</i>. In the FCA's view, the provision of information in these circumstances is more akin to facilitating performance of a <i>contract of insurance</i> rather than assisting in the performance (see PERG 5.7.3 G to PERG 5.7.5 G)</p>
<p>Completion of claim form on behalf of insured</p>	Potentially.	<p>This activity amounts to assisting in the administration of a <i>contract of insurance</i>. Whether this activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> will depend upon whether a <i>person's</i> assistance in filling in a claims form is material to whether performance of the contractual obligation to notify a claim takes place (see PERG 5.7.2 G to PERG 5.7.3 G).</p>
<p>Notification of claim to <i>insurance undertaking</i> and helping negotiate its settlement on the <i>policyholder's</i> behalf</p>	Yes.	<p>This activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> (see PERG 5.7.4 G).</p>
<p>ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS</p>		
<p>Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i></p>	No.	<p>Claims management on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i> by virtue of the exclusion in article 39B (see PERG 5.7.7 G).</p>
<p>Providing information to an <i>insurance undertaking</i> in connection with its investigation or assessment of a claim</p>	No.	<p>This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i>.</p>
<p>Loss adjusters and claims management services (for example, by</p>	Potentially.	<p>These activities may amount to <i>assisting in the administration and</i></p>

Type of activity	Is it a regulated activity?	Rationale
administration out-sourcing providers)		<i>performance of a contract of insurance</i> . Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see PERG 5.7.7 G).
Providing an expert appraisal of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> whether carried out on behalf of an <i>insurance undertaking</i> or otherwise.
Jeweller repairs customer's jewellery pursuant to a <i>policy</i> which permits the jeweller to carry out repairs	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> . It amounts to managing claims on behalf of an <i>insurance undertaking</i> and so falls within the exclusion in article 39B (see PERG 5.7.7 G).

5.15.5 G [deleted]

5.15.6 G [deleted]

5.15.7 G [deleted]

5.15.8 G [deleted]

5.16 Meaning of 'insurance distribution' and 'reinsurance distribution'

5.16.1 G ■ PERG 5.16.2 G sets out the text of article 2.1(1), 2.1(2) and 2.2 of the *IDD*. It is referred to in ■ PERG 5.2.5 G and ■ PERG 5.2.6R (Approach to implementation of the *IDD*), ■ PERG 5.8.13G (Advice must relate to the merits of buying or selling a contract of insurance), ■ PERG 5.11.7 G (Exclusions disapplied in connection with insurance distribution) and ■ PERG 5.11.10 G (Activities carried on in the course of a profession or non-investment business).

5.16.2 G

(1) Text of article 2.1(1) of the Insurance Distribution Directive

“‘Insurance distribution’ means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

(2) Text of article 2.1(2) of the Insurance Distribution Directive

“‘Reinsurance distribution’ means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.

(3) Text of article 2.2 of the Insurance Distribution Directive

“For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:

(a) the provision of information on an incidental basis in the context of another professional activity where:

(i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;

(ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;

- (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract."

