

Chapter 5

Guidance on insurance distribution activities



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 *United Kingdom*));
 - (d) activities carried on by *firms* with a *Part 4A permission to manage a UK 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. This was 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

G

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 disapplied in connection with insurance distribution

- 5.11.7 **G** Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disapplies 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 the *United Kingdom*. In relation to a *contract of insurance* entered into before IP completion day, article 4(4A) applies in relation to a risk or commitment located in the *United Kingdom* or 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

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 UK 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*.