Professional firms
Professional firms

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1.1 Application and Purpose

Application

1.1.1 This sourcebook applies as follows:

(1) PROF 1 to PROF 4 apply to exempt professional firms;

(2) PROF 5 applies to authorised professional firms; and

(3) [deleted]

(4) PROF 7 applies to every designated professional body and every exempt professional firm that is carrying on, or proposing to carry on, insurance distribution activity.

1.1.1A This sourcebook does not apply to an incoming ECA provider acting as such.

1.1.2 This sourcebook is also relevant to designated professional bodies.

Purpose

1.1.3 Under Part XX of the Act (Provision of Financial Services by Members of the Professions) certain individuals, partnerships or corporate entities, known as exempt professional firms, can carry on particular regulated activities (which the Act terms exempt regulated activities) under supervision and regulation by designated professional bodies.

1.1.4 This sourcebook outlines:

(1) the arrangements for designation of professional bodies;

(2) the conditions for activities to be treated as exempt regulated activities (see PROF 2.1.3 G);

(3) the FCA’s duty to keep itself informed about how designated professional bodies supervise and regulate the exempt regulated activities of exempt professional firms and how exempt professional firms carry on exempt regulated activities;

(4) the FCA’s power under section 328 of the Act (Directions in relation to the general prohibition) to make a direction to deny the exemption to different classes of person or to different descriptions of regulated activity;
(5) the implications for an authorised professional firm that carries on an non-mainstream regulated activities; and

(6) the arrangements made by the FCA for complying with its obligations under the IDD in relation to:

(a) maintaining a record of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance distribution activity; and

(b) exempt professional firms that wish to passport under the IDD.

1.1.5 This sourcebook also contains disclosure rules made by the FCA under the power conferred by section 332(1) of the Act (Rules in relation to persons to whom the general prohibition does not apply). These rules apply to exempt professional firms for the purpose of ensuring that their clients are made aware that exempt professional firms are not authorised persons.

1.1.6 The rules and guidance in this sourcebook are intended to:

(1) assist the protection of clients of exempt professional firms by ensuring that the FCA has information which allows it to keep under review the exercise of the direction power under section 328 of the Act (see PROF 1.1.4 G (4));

(2) secure an appropriate degree of protection for consumers by ensuring that the clients of an exempt professional firm are made aware that the firm is not an authorised person;

(3) enable the FCA to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under 325 of the Act (FCA’s general duty); and

(4) explain the background to and the arrangements made by the FCA for:

(a) the registration of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance distribution activity; and

(b) authorised professional firms and exempt professional firms that wish to exercise their EEA right under the IDD to establish a branch or provide cross border services in another EEA State.

1.1.7 Professional firms should refer to PERG 8 (Financial promotion and related activities) for general guidance on financial promotion and to PERG 8.15 (Financial promotions by members of the professions (articles 55 and 55A)) for guidance on the exemptions which are specifically intended for professional firms.
Chapter 2

Status of exempt professional firm
2.1 Designated professional bodies and exempt regulated activities

Designated professional bodies

2.1.1 G The Treasury designates professional bodies. Section 326 of the Act (Designation of professional bodies) sets out the conditions a body must satisfy before it can be designated.

2.1.2 G The professional bodies that have been designated by the Treasury are listed in PROF 2 Annex 1 G.

Exempt regulated activities

2.1.3 G Section 327 of the Act (Exemption from the general prohibition) sets out the conditions which must be met for a person to be treated as an exempt professional firm, and for the person’s regulated activities to be treated as exempt regulated activities. If the exemption in section 327 does not apply to a person and the person carries on a regulated activity, the person may contravene the general prohibition and be committing a criminal offence. The FCA’s approach to the use of its powers in respect of alleged contraventions of the general prohibition is explained in EG 12.

2.1.4 G If the FCA has made a direction under section 328 of the Act (Directions in relation to the general prohibition) (see PROF 3.2) in relation to classes of person (or regulated activity), then a person within the class (or carrying on the regulated activity) specified will not be an exempt professional firm. In addition, section 329 of the Act (Orders in relation to the general prohibition) gives the FCA power to make an order disapplying the Part XX exemption from a person named in the Order. The FCA’s general approach to the use of this power is explained in EG 16.

2.1.5 G Section 327(2) provides that an exempt professional firm must be a member of a profession or be controlled or managed by one or more members. The FCA considers that “managed” here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant person.

2.1.6 G The effect of section 327(7) of the Act is that an exempt professional firm can carry on regulated activities in that capacity or as an exempt person but
not otherwise. Therefore, an exempt professional firm cannot be an authorised person.

2.1.7 The Act does not, however, prevent an exempt professional firm from carrying on, in addition to exempt regulated activities, any regulated activities in relation to which it is an exempt person. For example, it is possible for an exempt professional firm to carry on regulated activities as an appointed representative.

2.1.8 Section 327 also sets out the conditions which determine the particular regulated activities an exempt professional firm may carry on.

2.1.9 Section 327(6) of the Act gives the Treasury power to make an order specifying activities, or activities relating to specified investments, that a person cannot carry on as an exempt professional firm. The relevant orders are listed in PROF 2 Annex 2 G.

2.1.10 Section 332(3) of the Act requires a designated professional body to make rules that define the particular regulated activities which its members are allowed to carry on. Section 332(4) of the Act provides that those rules must be designed to secure that, in providing a particular professional service to a particular client, a member must carry on only regulated activities which arise out of, or are complementary to, the provision by the member of that professional service to the client.

2.1.11 The FCA is required to approve the rules designated professional bodies make under section 332(3) of the Act. These rules must be in place in order to allow a person to be an exempt professional firm. They add to the other conditions within section 327 but do not override them, and a firm may need to refer to section 327 if it is in doubt whether an activity is an exempt regulated activity.

2.1.12 Section 327(3) deals with the treatment by a firm of a pecuniary reward or other advantage received from anyone other than the firm’s client. For a regulated activity to be treated as an exempt regulated activity, the firm must account to its client for any such receipt. The FCA considers this to mean that an exempt professional firm must hold to the order of its client any such reward or other advantage that it receives.

2.1.13 Section 327(4) states that the manner of the provision of any service in the course of carrying on regulated activities must be incidental to the provision by the exempt professional firm of professional services. For this purpose, professional services are services which do not constitute carrying on a regulated activity, and the provision of which is supervised and regulated by a designated professional body.

2.1.14 The FCA considers that to satisfy the condition in section 327(4) regulated activities cannot be a major part of the practice of the firm. The FCA also considers the following further factors to be among those that are relevant:
(1) the scale of regulated activity in proportion to other professional services provided;

(2) whether and to what extent activities that are regulated activities are held out as separate services; and

(3) the impression given of how the firm provides regulated activities, for example through its advertising or other promotions of its services.

2.1.15 The FCA’s view is that, in the context of section 327 as an exemption from the general prohibition, the conditions in section 327 should be interpreted as not imposing any restriction on the regulated activities that an exempt professional firm may carry on outside the United Kingdom. For further guidance on when a regulated activity is carried on 'in the United Kingdom', exempt professional firms are referred to section 418 of the Act and the guidance in PERG 2.4 (Link between activities and the United Kingdom).

2.1.16 (1) An exempt professional firm providing a service which is an investment service is required to do so in accordance with article 4 of the MiFID Org Regulation.

(2) In the FCA’s view, PROF 2.1.14G is also relevant for these purposes as well as the approach to disclosure described in PROF 4.1.4G, noting that article 4(c) of the MiFID Org Regulation imposes a disclosure obligation when an exempt professional firm markets or otherwise promotes its ability to provide investment services.
Status of exempt professional firm G

On 28 March 2001 the following professional bodies were designated by the Treasury under section 326(1) of the Act:

- the Law Society of England & Wales
- the Law Society of Scotland
- the Law Society of Northern Ireland
- the Institute of Chartered Accountants in England and Wales
- the Institute of Chartered Accountants of Scotland
- the Institute of Chartered Accountants in Ireland
- the Association of Chartered Certified Accountants
- the Institute of Actuaries.

On 14 January 2005, the Council for Licensed Conveyancers was designated by the Treasury under section 326(1) of the Act.

On 10 February 2006, the Royal Institution of Chartered Surveyors was designated by the Treasury under section 326(1) of the Act.
Non Exempt activities orders under section 327(6) of the Act (see PROF 2.1.9 G)

As at 31 October 2004, the Treasury had made the following orders under section 327(6):

Chapter 3

The FCA's duties and powers
3.1 The FCA's duty to keep itself informed

3.1.1 325 of the Act (Authority's general duty) imposes on the FCA a duty to keep itself informed about:

(1) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by exempt professional firms; and

(2) the way in which exempt professional firms carry on exempt regulated activities.

3.1.2 The FCA keeps itself informed in a number of ways. A designated professional body has a duty under section 325(4) of the Act to cooperate with the FCA. Article 94 of the Regulated Activities Order requires each designated professional body to provide the FCA with the information it needs to maintain a public record of persons that are registered with the FCA to conduct insurance distribution activity. The FCA has made arrangements with each of the designated professional bodies about the information they provide to it, to include information about:

(1) complaints and redress arrangements;

(2) complaints volumes and their analysis;

(3) disciplinary action;

(4) supervisory activity;

(5) the activities carried on by exempt professional firms, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements; and

(6) the names and addresses of each of their exempt professional firms that carry on, or are proposing to carry on, insurance distribution activity, together with the details of the individuals within the management of the exempt professional firms who are responsible for the insurance distribution activity and, where relevant, the passporting information required by the FCA for the purposes of paragraph 25 of Schedule 3 to the Act (EEA Passport Rights).

3.1.3 Information may also be obtained from exempt professional firms, government departments, trade bodies, consumer organisations and clients of exempt professional firms. The FCA may also commission or carry out
reviews of the supervisory and regulatory activities of a designated professional body and commission or carry out research about, or surveys of, exempt professional firms or their clients.
3.2 The FCA's power to make a direction

3.2.1 Section 328 of the Act (Directions in relation to the general prohibition) gives the FCA power to make a direction that the exemption under section 327 of the Act (see PROF 2.1.3 G) does not apply to the extent specified in the direction. Section 328 allows the FCA to make a direction in relation to different classes of person or different descriptions of regulated activity. Section 325(3) of the Act requires the FCA to keep under review the desirability of exercising its powers under Part XX of the Act (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the Act.

3.2.2 If the FCA gives a direction in relation to specified classes of person, then any person within those classes may be in contravention of the general prohibition unless:

(1) it ceases to carry on regulated activities; or

(2) it is an authorised person; or

(3) it is an exempt person.

3.2.3 A direction might also cover classes of persons who are members of different designated professional bodies.

3.2.4 Were the FCA to give a direction in relation to a description of regulated activity (for example, dealing in investments as agent), then that activity could no longer be carried on within the terms of the exemption.

3.2.5 (1) The FCA may exercise its direction powers under section 328(6) of the Act in two situations, as set out in (2) and (3).

(2) First, the FCA may exercise its direction power under section 328(6)(a) of the Act if it is satisfied that it is desirable in order to protect the interests of clients. In considering whether it is satisfied, the FCA is required by section 328(7) of the Act to have regard, among other things, to the effectiveness of any arrangements made by a designated professional body:

(a) for securing compliance with rules made under section 332(1) of the Act (see PROF 4.1.1 G);
(b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities (see PROF 4.1.4 G (2)(d));

(c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities (see PROF 4.1.4 G (2)(d)); and

(d) for cooperating with the FCA under section 325(4) of the Act (see PROF 3.1.2 G).

(3) Second, the FCA may exercise its direction power under section 328(6)(b) of the Act if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the IDD. For example, the FCA might wish to do so if it was not receiving from a designated professional body the information it needs to maintain the Financial Services Register (see PROF 7.1).

3.2.6 Section 330 of the Act (Consultation) sets out procedures which the FCA must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

(1) the FCA must consult publicly on its proposed direction;

(2) the FCA must have regard to any representations made in response to the consultation; and

(3) if the FCA then gives the proposed direction, it must publish an account of the representations made and its response to them.

3.2.7 The directions the FCA has made under section 328 (6)(a) are set out in PROF 3 Annex 1 G. Directions made by the FCA under section 328(6)(b) of the Act are listed in PROF 3 Annex 2 G (The FCA’s duties and powers).
Section 3.2 : The FCA's power to make a direction
The FCA's duties and powers

Directions made by the FCA under section 328(6)(a) of the Act (see PROF 3.2.7 G)

The FCA has made no directions under section 328(6)(a) of the Act.
The FCA's duties and powers

Directions made by the FCA under section 328(6)(b) of the Act (see PROF 3.2.7 G)

The FCA has made no directions under section 328(6)(b) of the Act.
The effectiveness of arrangements made by a designated professional body for securing compliance with the rules in this chapter is one of the factors that the FCA must take into account in considering whether to exercise its powers to give a direction under section 328 of the Act (see PROF 3.2.5 G (2) and PROF 3.2.5 G (3)).

An exempt professional firm must avoid making any representation to a client that:

1. it is authorised under the Act or regulated by the FCA; or
2. the regulatory protections provided by or under the Act to a person using the services of an authorised person are available.

An exempt professional firm must, before it provides a service which includes the carrying on of a regulated activity in the United Kingdom, other than an insurance distribution activity, with or for a client, disclose in writing to the client in a manner that is clear, fair and not misleading that it is not authorised under the Act.

The FCA considers that material provided to satisfy PROF 4.1.3 R (1) and PROF 4.1.3 R (2) need not be tailored to the individual client. The disclosures in PROF 4.1.3 R (1) and PROF 4.1.3 R (2) may be provided alongside or integrated with other material provided to a client. Exempt professional firms may therefore include the information within engagement letters or client care letters, if they wish.
(2) The FCA considers that it is important that clients understand the implications for them of receiving services from an exempt professional firm that is not authorised under the Act. It is also important that clients understand the implications of the difference between authorisation under the Act and being on the register maintained by the FCA, so that the exempt professional firm can conduct insurance distribution activity, in relation to which activity the regulatory protections established by the Act for the benefit of consumers will not apply. The FCA therefore expects designated professional bodies to make rules covering the information to be provided to clients. These rules should require exempt professional firms to make a disclosure to clients containing the following elements:

(a) where the exempt professional firm conducts a regulated activity other than an insurance distribution activity, a statement that the exempt professional firm is not an authorised person;

(b) the nature of the regulated activities carried on by the exempt professional firm, and the fact that they are limited in scope;

(c) a statement that the exempt professional firm is regulated for these regulated activities by the exempt professional firm’s designated professional body, identifying the designated professional body concerned;

(d) the nature of the complaints and redress mechanisms available to clients in respect of these regulated activities; and

(e) where the regulated activity consists of insurance distribution activity, the statement contained at PROF 4.1.3 R (2).

(3) Exempt professional firms should also ensure that any statement that makes reference to the FCA does not lead a client to suppose that the FCA has direct regulatory responsibility for the exempt professional firm. This could be a breach of PROF 4.1.2 R. This consideration is particularly important in relation to insurance distribution activity, where clients may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FCA so as to permit the exempt professional firm to carry on insurance distribution activity.

4.1.5 For further guidance on when a regulated activity is carried on ‘in the United Kingdom’, exempt professional firms are referred to section 418 of the Act and the guidance in PERG 2.4.
Chapter 5

Non-mainstream regulated activities
5.1 Application and purpose

Application

5.1.1 R
This chapter applies to an authorised professional firm that carries on non-mainstream regulated activities.

Purpose

5.1.2 G
This chapter:

(1) contrasts "exempt regulated activities" with "non-mainstream regulated activities";

(2) sets out the conditions which must be satisfied for a regulated activity of an authorised professional firm to constitute a non-mainstream regulated activity;

(3) refers to other parts of the Handbook in which provisions are disapplied or modified in relation to authorised professional firms when carrying on non-mainstream regulated activities;

(4) gives effect to the Distance Marketing Regulations with respect to the non-mainstream regulated activities of authorised professional firms.

Exempt regulated activities contrasted with non-mainstream regulated activities

5.1.3 G
(1) The FCA's policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities.

(2) Subject to conditions (see ▲ PROF 2), members of designated professional bodies that are not authorised can carry on particular regulated activities, known as exempt regulated activities, and obtain the benefit of the exemption under section 327 of the Act from the general prohibition.

(3) In contrast, non-mainstream regulated activities are particular regulated activities carried on by an authorised professional firm. If the professional firm were not authorised under the Act, these same activities would be exempt regulated activities which, if the firm could meet the necessary conditions in section 327, would enable it to benefit from the section 327 exemption.
(4) Therefore, a number of provisions of the Handbook (see PROF 5.3) have been disapplied or modified in respect of these non-mainstream regulated activities of authorised professional firms.

5.1.4 A "non-mainstream regulated activity" is defined in the Glossary as "a regulated activity of an authorised professional firm in relation to which the conditions in PROF 5.2.1 R are satisfied". Conditions (1) to (6) of PROF 5.2.1 R replicate section 327(1)(b)(i) (3) (4) (5) and (6) of the Act, as if those conditions applied to an authorised professional firm.
5.2 Nature of non-mainstream regulated activities

Conditions for non-mainstream regulated activity

A "non-mainstream regulated activity" is a regulated activity of an authorised professional firm in relation to which the following conditions are satisfied:

1. The firm must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of the carrying on of the regulated activity;

2. The manner of the provision by the firm of any service in the course of carrying on the regulated activity must be incidental to the provision by it of professional services (see PROF 5.2.2 R);

3. The regulated activity must not be of a description, or relate to an investment of a description, specified in The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) or in any other order made by the Treasury under section 327(6) of the Act (see PROF 2 Annex 2 GG);

4. There must not be in force any direction under section 328 of the Act (Directions in relation to the general prohibition) in relation to:
   a. a class of person which would have included the firm were it not an authorised person; or
   b. a description of regulated activity which includes the regulated activity the firm proposes to carry on;

5. The regulated activity must be an activity which exempt professional firms which are members of the same designated professional body as the authorised professional firm are permitted to carry on under rules made by that body as required by section 332(3) of the Act; and

6. The authorised professional firm is subject to the rules referred to in (5).

[deleted]

5.2.2 In PROF 5.2.1 R (2), "professional services" means services:

1. Which do not constitute a regulated activity; and
(2) the provision of which is supervised and regulated by a designated professional body.
5.3 Reference to other sourcebooks and manuals

Introduction

The parts of the Handbook in which provisions are disapplied or modified in relation to authorised professional firms when carrying on non-mainstream regulated activities include those described in PROF 5.3.1A G to PROF 5.3.9 G

General provisions

5.3.1 G

5.3.1A G

5.3.2 G

COBS 18.11 provides that COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except for:

(1) the fair, clear and not misleading rule;

(1A) the financial promotion rules, but only in limited circumstances;

(2) (where these are insurance distribution activities) the parts of COBS set out in COBS 18.11.2R(3)(a) to (i) which implement the IDD apply unless:

(a) the designated professional body of the firm has made rules which implement some or all of articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the IDD;

(b) those rules have been approved by the FCA under section 332(5) of the Act; and

(c) the firm is subject to the rules in the form in which they were approved;

(3) COBS 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest; and

(4) COBS 5.2 (E-commerce).

Training and Competence sourcebook

5.3.3 G

TC Appendix 3 provides that TC, which imposes the substantive training and competence requirements for retail clients or customers, does not apply to...
an authorised professional firm with respect to its non-mainstream regulated activities.

Senior Management Arrangements, Systems and Controls

5.3.4 The following provisions do not apply to authorised professional firms when carrying on non-mainstream regulated activities:

(1) SYSC 6.3 (Financial crime), in relation to money laundering;
(2) SYSC 10.1 (Application), in relation to conflicts of interest;
(3) SYSC 10.2 (Chinese walls);
(4) SYSC 19F.2 (IDD remuneration incentives) where the designated professional body of the firm has made rules, approved by the FCA, that implement article 17(3) of the IDD and that apply to the firm; and
(5) SYSC 28.2 ((Knowledge and ability requirements) except SYSC 28.2.1R(1)).

Supervision manual

5.3.5 SUP 10A.1.17 R provides that SUP 10A (Approved persons) does not apply (except in respect of the required functions) to an authorised professional firm in respect of its non-mainstream regulated activities. So a person such as a partner, whose only regulated activities are incidental to his professional services, in an authorised professional firm whose principal purpose is to carry on activities other than regulated activities, need not be an approved person.

Dispute resolution: Complaints sourcebook

5.3.6 DISP 1.1.5R (3) provides that DISP 1 (Treating complainants fairly) only applies to an authorised professional firm in so far as its mainstream regulated activities are concerned. DISP 2.3.4 R further provides that a complaint about an authorised professional firm cannot be handled under the Compulsory Jurisdiction of the Financial Ombudsman Service if it relates solely to non-mainstream regulated activity and can be handled by a designated professional body. This is because such a complaint will be handled by the relevant professional body.

Market Conduct sourcebook

5.3.7 MAR 4.4.1 R (3) provides that MAR 4, which deals with the endorsement of the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares, does not have effect in relation to an authorised professional firm in respect of non-mainstream regulated activity.

Mortgages: Conduct of business sourcebook

5.3.8 MCOB 1.2.10 R provides that MCOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities.
except for MCOB 3A (Financial promotions and communications with customers).

Client Assets

5.3.9  
CASS 1.2.4 R provides that with the exception of CASS 1 and the insurance client money chapter, CASS does not apply to authorised professional firms when carrying on non-mainstream regulated activities. CASS 1.2.5 R further provides that if the non-mainstream regulated activities are insurance distribution activity, CASS 5 (the insurance client money chapter) does not apply to an authorised professional firm, if the firm’s designated professional body has rules applicable to the firm which implement the IDD and which are in the form approved by the FCA under section 332(5) of the Act.

Insurance: Conduct of Business sourcebook

5.3.10  
(1) ICOBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities (see ICOBS 1 Annex 1, Part 1, paragraph 3.1R, except for:

(a) the provisions on communications to clients and financial promotions (ICOBS 2.2);

(b) the e-commerce provisions (ICOBS 3.2);

(c) status disclosure requirements in relation to complaints procedures (ICOBS 4.1); and

(d) provisions in ICOBS which implement articles 1(4), 17, 18, 19, 20, 23, and 24 of the IDD (see ICOBS 2.2.2R (communication to customers and financial promotions), ICOBS 2.2.2AR (marketing communications), ICOBS 2.5.1R (the customer’s best interests rule), ICOBS 2.6 (Distribution of connected contracts through exempt persons), ICOBS 4.1 (Information about the firm, its services and remuneration), ICOBS 4.1A (Means of communicating to customers), ICOBS 4.3 (remuneration disclosure), ICOBS 5.2 (Demands and needs), ICOBS 5.3.3R (Advice on the basis of a fair analysis), ICOBS 5.3.4R (Personalised explanation), ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 6A.3 (Cross-selling)), except to the extent that the firm is subject to equivalent rules of its designated professional body which have been approved by the FCA.

(2) [deleted]
5.4 Application of the Distance Marketing Regulations

5.4.1 In addition to those provisions of the Distance Marketing Regulations which apply directly, an authorised professional firm must, with respect to its non-mainstream regulated activities, comply with regulations 7 to 11 and 15 of the Distance Marketing Regulations. Those regulations have effect to cancel distance contracts the making or performance of which by such firms constitutes a non-mainstream regulated activity.

(2) Paragraph (1) does not apply in relation to regulations 7 to 8 and 15 if the designated professional body of the authorised professional firm has rules equivalent to some or all of those regulations and:

(a) those rules have been approved by the FCA under section 332(5) of the Act; and

(b) the authorised professional firm is subject to those rules in the form in which they have been approved;

in which case those regulations are disapplied to the extent that they are implemented by the rules of the designated professional body.

5.4.2 The effect of PROF 5.4.1 R is that it allows designated professional bodies to make rules which allow an authorised professional firm to comply with the Distance Marketing Regulations in respect of its non-mainstream regulated activities in the same way as an exempt professional firm which is a member of the same designated professional body in respect of its exempt regulated activities.
[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
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Chapter 7

Insurance distribution activity
7.1 Register of persons carrying on insurance distribution activity

Background

7.1.1 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (SI 2003/1476) and the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order (SI 2018/546) implement in part the provisions of the IDD and amend the Regulated Activities Order.

Article 93 of the amended Regulated Activities Order requires the FCA to maintain an up-to-date record of every unauthorised person, whether an appointed representative or an exempt professional firm that carries on, or is proposing to carry on, insurance distribution activity and to whom the general prohibition does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the Act.

7.1.2 Article 94 of the amended Regulated Activities Order requires the FCA to maintain an up-to-date record of every unauthorised person that carries on, or proposes to carry on, insurance distribution activity and keep it up to date. This information needs to include the details referred to in section 327 of the Act.

7.1.3 The FCA is not to include an exempt professional firm in the register relating to unauthorised persons if:

1. under a direction given by the FCA under section 328(1) of the Act, section 327(1) of the Act does not apply in relation to the carrying on by it of insurance distribution activity; or

2. the FCA has made an order under section 329(2) of the Act disapplying section 327(1) of the Act in relation to the carrying on by the exempt professional firm of insurance distribution activity.

Provision of information to the FCA

7.1.4 Article 94 of the Regulated Activities Order obliges a designated professional body to provide the FCA with the information it needs to maintain the record referred to in section 327 of every unauthorised person that carries on, or proposes to carry on, insurance distribution activity and keep it up to date. This information needs to include the details referred to in section 327 of the Act. This is the responsibility of the designated professional body and not each exempt professional firm.
7.1.5 (1) The attention of exempt professional firms is drawn to the significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that exempt professional firms may not carry on certain regulated activities which relate to a contract of insurance in reliance on the Part XX exemption unless the exempt professional firm is included in the record of unauthorised persons carrying on insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order.

(2) Each exempt professional firm carrying on, or proposing to carry on, insurance distribution activity should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the FCA. Any such exempt professional firm carrying on, or proposing to carry on, insurance distribution activity whose name does not appear in the record maintained by the FCA is likely to be breaching the general prohibition which is a criminal offence under section 23 of the Act.

7.1.6 In order to comply with its obligations to maintain a record of unauthorised persons that carry on, or are proposing to carry on, insurance distribution activity, the FCA has established an appropriate record which forms part of the record maintained by the FCA under section 347 of the Act. The record maintained by the FCA under section 347 of the Act is known as the Financial Services Register. The Financial Services Register therefore contains a record of each authorised and unauthorised person that carries on, or proposes to carry on, insurance distribution activity.

7.1.7 The information to be included on the record in relation to exempt professional firms will, as required by the IDD, include details of:

1. the name and address of each exempt professional firm that carries on, or is proposing to carry on, insurance distribution activity;

2. where the exempt professional firm is not an individual, the names of the individuals within the management of the exempt professional firm who are responsible for the insurance distribution activity, and

3. each EEA State in which the exempt professional firm under an EEA right derived from the IDD:

   a. has established a branch; or
   b. is providing cross border services.

7.1.8 The Financial Services Register can be accessed through the FCA website under the link www.fca.org.uk/firms/financial-services-register.
7.2 Passporting under the IDD

7.2.1 All persons that are on the register maintained by the FCA in accordance with article 3 of the IDD, and so permitted to conduct insurance distribution activity, are entitled to exercise the EEA right conferred upon them by articles 4 (freedom to provide services) and 6 (freedom of establishment) of the IDD to establish a branch or provide services relating to insurance distribution activity in another EEA State. Both authorised professional firms and exempt professional firms that are so registered by the FCA get the benefit of these passporting rights.

7.2.2 Any authorised professional firm or exempt professional firm that is contemplating the exercise of rights under articles 4 (freedom to provide services) or 6 (freedom of establishment) of the IDD to establish a branch or provide services relating to insurance distribution activity in another EEA State is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both authorised professional firms and exempt professional firms are UK firms for the purposes of the Handbook, including SUP 13.

7.2.3 A UK firm proposing to establish a branch in another EEA State for the first time under an EEA right derived from the IDD must first satisfy the conditions in paragraphs 19(2)(4) and (5) of Part III of Schedule 3 to the Act (EEA Passport Rights). These include the requirement that the firm must at the outset give the FCA a notice in the required form of its intention to establish the branch. SUP 13.3.2 G to SUP 13.3.2C G and SUP 13.3.5 G detail the procedure to be followed once such a notice of intention has been received by the FCA. SUP 13.5.1 R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9A G (Firms passporting under the IDD) will also be relevant.

7.2.4 A UK firm proposing to provide cross border services into another EEA State for the first time under an EEA right derived from the IDD must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act (EEA Passport Rights). The UK firm must at the outset give the FCA a notice in the required form of its intention to provide the cross border services into another EEA State. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2 G, SUP 13.4.4 G and SUP 13.4.5AG. SUP 13.5.2 R (Specified contents: notice of intention to provide cross border services) and SUP 13.7.11AG will also be relevant.
## Professional firms

### PROF TP 1

**Transitional provisions**

<table>
<thead>
<tr>
<th></th>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transitional provision: dates in force</th>
<th>Handbook provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PROF 4.1.2 R</td>
<td>The FCA considers that the issue by an exempt professional firm of a letter to a client on a letterhead that includes a statement that it is “authorised” will be in breach of PROF 4.1.2 R. This includes a statement such as: “This firm is authorised in the conduct of investment business by [name of recognised professional body] under the Financial Services Act 1986.” However, an exempt professional firm which has been authorised for investment business by a recognised professional body under the Financial Services Act 1986 may continue to use stocks of notepaper and other material that discloses its status under that act, provided that it strikes through the disclosure statement.</td>
<td>From commencement</td>
<td>Commencement</td>
</tr>
<tr>
<td>2</td>
<td>PROF</td>
<td>General transitional provisions GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.</td>
<td>From commencement</td>
<td>Commencement</td>
</tr>
</tbody>
</table>
Professional firms

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in PROF.
Professional firms

Schedule 2
Notification requirements

Sch 2.1 G
There are no notification or reporting requirements in PROF.
Professional firms

Schedule 3
Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in PROF.
Professional firms

Schedule 4
Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]
Professional firms

Schedule 5
Rights of action for damages

Sch 5.1 G

The table below sets out the rules in PROF contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a "YES" appears in the column headed "For private person?", the rule may be actionable by a "private person" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No. 2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

Sch 5.4 G

<table>
<thead>
<tr>
<th>Chapter/Appendix</th>
<th>Section/Annex</th>
<th>Paragraph</th>
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<th>Removed?</th>
<th>For other person?</th>
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<tr>
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<td></td>
<td></td>
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<td>No</td>
<td>No</td>
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</table>

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<tr>
<th>Conditions for non-mainstream regulated activity</th>
</tr>
</thead>
</table>
Professional firms

Schedule 6
Rules that can be waived

Sch 6.1 G

As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its rules, other than rules made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom’s responsibilities under those directives.