

## 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

- p not otherwise. Therefore, an
- exempt professional firm*
- cannot be an
- authorised person*
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- 2.1.7 **G** 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 **G** Section 327 also sets out the conditions which determine the particular *regulated activities* an *exempt professional firm* may carry on.
- 2.1.9 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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.

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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).

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- (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*.