

Chapter 7

Insurance distribution activity



7.1 Register of persons carrying on insurance distribution activity

Background

- 7.1.1 **G** 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*.
- 7.1.2 **G** 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*.
- 7.1.3 **G** 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*.
- 7.1.4 **G** 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 **PROF 7.1.2 G** 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 **PROF 7.1.7 G**. This is the responsibility of the *designated professional body* and not each *exempt professional firm*.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

- 7.1.5** G (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*.

Financial Services Register

7.1.6 G 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** G 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*.

FCA Website

7.1.8 G 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** **G** 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** **G** 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** **G** 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** **G** 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.