Chapter 12

Appointed representatives
12.2 Introduction

What is an appointed representative?

(1) Under section 19 of the Act (The general prohibition), no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is an authorised person, or he is an exempt person in relation to that activity.

(2) A person will be an exempt person if he satisfies the conditions in section 39(1) of the Act, guidance on which is given in ▬SUP 12.2.2 G. A person who is exempt as a result of satisfying these conditions is referred to in the Act as an appointed representative.

(3) If an appointed representative is also a tied agent or a MiFID optional exemption appointed representative he must also satisfy the condition in section 39(1A) of the Act in order to be an exempt person. See ▬SUP 12.4.12G and ▬SUP 12.4.13G for guidance on that condition, ▬SUP 12.2.16G for more general guidance about tied agents, and ▬SUP 12.2.17G for guidance about MiFID optional exemption appointed representatives.

(3A) If an appointed representative is also a structured deposit appointed representative he must also satisfy the condition in section 39(1AA) of the Act in order to be an exempt person. See ▬SUP 12.4.12G and ▬SUP 12.4.13G for guidance on that condition and ▬SUP 12.2.18G for guidance about structured deposit appointed representatives.

(4) If an appointed representative has entered into a contract with an MCD credit intermediary and is a person to whom section 39(1BA) of the Act applies, they must also satisfy the conditions in section 39(1BB) of the Act to be an exempt person. See ▬SUP 12.4.10C G for guidance on those conditions.

(1) A person (other than a firm with only a limited permission) must satisfy the conditions in section 39(1) of the Act to become an appointed representative. These are that:

(a) the person must not be an authorised person, that is, he must not have permission under the Act to carry on any regulated activity in his own right (section 39(1) of the Act);

(b) the person must have entered into a contract with an authorised person, referred to in the Act as the ‘principal’, which:

(i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations section 39(1)(a)(i) of the Act (see ▬SUP 12.2.7 G); and
(ii) complies with any requirements that may be prescribed in the Appointed Representatives Regulations of the Act; and

(c) the principal must have accepted responsibility, in writing, for the authorised activities of the person in carrying on the whole, or part, of the business specified in the contract.

(2) The appointed representative is an exempt person in relation to any regulated activity comprised in the carrying on of the business for which his principal has accepted responsibility.

Appointed representatives with limited permission to carry on certain credit activities

12.2.2A

(1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission, he is to be taken to have contravened a requirement imposed by the FCA (in the case of a FCA-authorised person) or the FCA and the PRA (in the case of a PRA-authorised person).

(2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an authorised person is guilty of an offence if he carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission. For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured on land (see the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014).

(3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:

(a) to an authorised person with only a limited permission;

(b) in relation to the carrying on by him of a regulated activity which is not one to which his limited permission relates;

if the conditions in section 39(1C) of the Act are met. Guidance on these conditions is given at SUP 12.2.28 G. A firm carrying on a regulated activity in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an appointed representative.

12.2.2B

(1) A firm must satisfy the conditions in section 39(1C) of the Act to become an appointed representative. These are that:

(a) the firm must have only a limited permission section 39(1C)(a) of the Act;

(b) the firm must have entered into a contract with another authorised person, referred to in the Act as the 'principal', which:
Who can be an appointed representative?

As long as the conditions in section 39 of the Act are satisfied, any person, other than an authorised person (unless he has only a limited permission), may become an appointed representative, including a body corporate, a partnership or an individual in business on his own account. However, an appointed representative cannot be an authorised person under the Act unless he has only a limited permission. A person cannot be exempt for some regulated activities and authorised for others. An appointed representative with a limited permission is not an exempt person, but he may carry on the regulated activity comprised in the business for which his principal has accepted responsibility without being taken to have contravened a requirement imposed on him by the FCA or PRA or committing an offence, even though the activity is not covered by his limited permission.

Can an appointed representative have more than one principal?

The Act and the Appointed Representatives Regulations do not prevent an appointed representative from acting for more than one principal. However, SUP 12.5.6AR (Prohibition of multiple principals for certain activities) prevents this for particular kinds of business.

What is a "network"?

A firm is referred to as a 'network' if it appoints five or more appointed representatives (not counting introducer appointed representatives) or if it appoints fewer than five appointed representatives (again, not counting introducer appointed representatives) which have, between them, twenty-six or more representatives. However, a network does not include:

(a) a product provider;

(b) a firm which markets the packaged products of a product provider in the same group as the firm and which does so other than by selecting products from the whole market;

(i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see SUP 12.2.7 G); and

(ii) complies with any requirements that may be prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(ii) of the Act); and

(c) the principal must have accepted responsibility, in writing, for the authorised activities of the firm in carrying on the whole, or part, of the business specified in the contract.

(2) The appointed representative is not subject to sections 20(1) or (1A) or 23(1A) of the Act 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.
Business for which an appointed representative is exempt

(1) The Appointed Representatives Regulations are made by the Treasury under sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an appointed representative may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:

(a) dealing in investments as agent [article 21] of the Regulated Activities Order (that is in summary, transactions in a designated investment (other than a P2P agreement), structured deposit, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan);

(b) arranging (bringing about) deals in investments [article 25(1)] of the Regulated Activities Order (that is in summary, deals in a designated investment (other than a P2P agreement), structured deposit, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan);

(c) making arrangements with a view to transactions in investments [article 25(2)] of the Regulated Activities Order (that is in summary, transactions in a designated investment (other than a P2P agreement), structured deposit, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan);

(d) arranging (bringing about) a home finance transaction (articles 25A(1), 25A(2A), 25B(1) and 25C(1) of the Regulated Activities Order);

(e) making arrangements with a view to a home finance transaction (articles 25A(2), 25B(2) and 25C(2) of the Regulated Activities Order);

(fa) debt adjusting (article 39D of the Regulated Activities Order);

(fb) debt counselling (article 39E of the Regulated Activities Order);

(fc) debt collecting (article 39F of the Regulated Activities Order);

(fd) debt administration (article 39G of the Regulated Activities Order);

(g) arranging safeguarding and administration of assets (part of article 40 of the Regulated Activities Order);

(c) an insurer in relation to a non-investment insurance contract; or

(d) a home finance provider.
(h) giving basic advice on a stakeholder product (article 52B of the Regulated Activities Order);

(i) advising on investments (except P2P agreements) (article 53(1) to (1D) of the Regulated Activities Order) (that is in summary, advising on any designated investment (other than a P2P agreement), structured deposit, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan);

(ia) advising on P2P agreements (article 53(2) of the Regulated Activities Order);

(j) advising on a home finance transaction (articles 53A, 53B and 53C of the Regulated Activities Order);

(ja) entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement (article 60B of the Regulated Activities Order) when carried on in relation to a credit agreement under which the credit is provided free of interest and without any other charges;

(jaa) advising on regulated credit agreements for the acquisition of land (article 53DA of the Regulated Activities Order);

(jab) advising on conversion or transfer of pension benefits (article 53E of the Regulated Activities Order);

(jb) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement (article 60N of the Regulated Activities Order);

(k) agreeing to carry on a regulated activity [article 64 of the Regulated Activities Order] where the regulated activity is one of those in (a) to (h) or (ja) or (jb); and

(l) providing credit information services (article 89A of the Regulated Activities Order).

(2) If the appointed representative is also a tied agent, the business for which the appointed representative may be exempt includes the following additional activities:

(a) placing financial instruments;

(b) providing advice to clients or potential clients in relation to the placing of financial instruments.

(3) [deleted]

(4) Regulated claims management activity is not a type of business for which an appointed representative may be exempt.

What is an introducer appointed representative?

(1) An introducer appointed representative is an appointed representative appointed by a firm whose scope of appointment must, under § SUP 12.5.7 R, be limited to:

(a) effecting introductions to the firm or other members of the firm’s group; and
(b) distributing non-real time financial promotions which relate to products or services available from or through the firm or other members of the firm's group.

(2) The permitted scope of appointment of an introducer appointed representative does not include in particular:
(a) dealing in investments as agent; or
(b) arranging (bringing about) deals in investments or arranging (bringing about) regulated mortgage contracts; or
(c) assisting in the administration and performance of a contract of insurance; or
(d) advising on investments, giving basic advice on a stakeholder product advising on a home finance transaction, advising on regulated credit agreements for the acquisition of land, or other activity that might reasonably lead a customer to believe that he had received basic advice or advice on investments or on home finance transactions or that the introducer appointed representative is permitted to give basic advice or give personal recommendations on investments or on home finance transactions.

(3) An introducer appointed representative may have more than one principal, but will need a contract with each principal.

(4) The approved persons regime does not apply to an introducer appointed representative (see ■ SUP 10A.1.15 R).

To become an introducer appointed representative, a person must meet the conditions in the Act to become an appointed representative (see ■ SUP 12.2.2 G).

All rules in ■ SUP 12 apply in relation to introducer appointed representatives except for:

1. ■ SUP 12.4.2 R, ■ SUP 12.4.5B R and ■ SUP 12.4.5C, on the appointment of appointed representatives, which are replaced by ■ SUP 12.4.6 R;

2. ■ SUP 12.5.6A R on required contract terms, which is replaced by ■ SUP 12.5.7 R; and

3. ■ SUP 12.9.1 R (4) (Record keeping).

If an introducer appointed representative is an individual in business on his own, then he will also be an introducer (see ■ SUP 12.2.13 G). This has certain implications in COBS.

Introducers and representatives: what do these terms mean and what is the relationship with an appointed representative?

A firm or its appointed representative may appoint or employ individuals to act as introducers or representatives in respect of designated investment business.
12.2.13 (1) An introducer is an individual appointed by a firm or by an appointed representative of such a firm to carry out, in the course of designated investment business, either or both of the following activities:

(a) effecting introductions;

(b) distributing non-real time financial promotions.

(2) An introducer is not an exempt person under section 39 of the Act (unless he is also an introducer appointed representative) and hence cannot benefit from the exemption to carry on regulated activities in his own right. As a result, an introducer that is not an introducer appointed representative works in the name of his firm or the firm's appointed representative but he does not fall within the scope of the approved persons regime as he does not, as such, perform a controlled function.

12.2.14 (1) A representative is an individual who is appointed by a firm or an appointed representative, to carry on any of the activities in (1)(a) to (c):

(a) advising on investments;

(b) arranging (bringing about) deals in investments;

(c) dealing in investments as agent.

(2) If a firm appoints an appointed representative who is an individual in (1), that appointed representative will also be a representative. The individual may need to be approved to perform the customer function, (see § SUP 12.6.8 G and § SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of § SUP 12 and other regulatory requirements, the firm should ensure that the rules for representatives in § COBS 6 (Information about the firm, its services and remuneration) are complied with.

12.2.15 [deleted]

What is a tied agent?

12.2.16 (1) A tied agent is a person who acts for and under the responsibility of a MiFID investment firm (or a third country investment firm) in respect of MiFID business (or the equivalent business of the third country investment firm). Most tied agents appointed by firms are also appointed representatives.

(2) Unless otherwise provided, this chapter applies to a firm that appoints a tied agent that is an appointed representative in the same way as it applies to the appointment of any other appointed representative.

(3) This chapter sets out the provisions which apply to tied agents:

(a) established in the UK; or

(b) established in another EEA State and appointed by a UK MiFID investment firm.
(4) A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.

(5) A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent. EEA tied agents are either FCA registered tied agent or EEA registered tied agents.

(6) This chapter only applies to a firm that appoints a tied agent that is not an appointed representative where it expressly refers to tied agents.

(7) Under MiFID, a tied agent must be registered with the competent authority of the EEA State in which it is established. A UK MiFID investment firm may appoint a tied agent established in the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent established in such an EEA State, the tied agent must be registered with the FCA. Such an EEA tied agent is referred to in the Handbook as an FCA registered tied agent.

(8) If a UK MiFID investment firm appoints a tied agent established in an EEA State other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent.

What is a MiFID optional exemption appointed representative?

12.2.17 (1) A MiFID optional exemption appointed representative is a person who acts for and under the responsibility of a MiFID optional exemption firm. Such appointed representatives are not also tied agents since they do not act on behalf of a MiFID investment firm in respect of MiFID business.

(2) Unless otherwise provided, this chapter applies to a firm that appoints a MiFID optional exemption appointed representative in the same way as it applies to the appointment of any other appointed representative.

(3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a MiFID optional exemption appointed representative.

What is a structured deposit appointed representative?

12.2.18 (1) If a MiFID investment firm or a third country investment firm appoints a person to act under its full and unconditional responsibility but only for the purpose of selling, or advising clients in relation to, structured
deposits (and not any of the activities within article 4(1)(29) of MiFID), that person will not be a tied agent in respect of that activity.

(2) Unless otherwise provided, this chapter applies to a firm that appoints a structured deposit appointed representative in the same way as it applies to the appointment of any other appointed representative.

(3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a structured deposit appointed representative.