Chapter 12

Appointed representatives
12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

The permission that the firm needs

12.4.1 [deleted]

12.4.1A The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the Act is that the regulated activities covered by an appointed representative’s appointment need to:

1. fall within the scope of the principal’s permission; or

2. be excluded from being regulated activities when carried on by the principal, for example because:
   
   a) they fall within article 28 of the Regulated Activities Order (Arranging transactions to which the arranger is a party);
   
   b) they constitute CBTL business and the principal is a CBTL firm; or
   
   c) the principal is appropriately authorised (see article 53(1A) of the Regulated Activities Order).

12.4.1B In relation to CBTL business only a CBTL firm which is a firm can appoint an appointed representative.

12.4.1C Where the principal is appropriately authorised for the purposes of article 53(1A) of the Regulated Activities Order (and so does not need permission to provide non-personal recommendation advice), the terms of the appointed representative’s appointment will still need to cover their business in carrying on non-personal recommendation advice. This is because an appointed representative providing non-personal recommendation advice will only be exempt from the general prohibition if the principal has accepted responsibility in writing for the appointed representative in carrying on such business. An appointed representative is not exempt from the general prohibition simply because the principal is appropriately authorised for the purposes of article 53(1A) of the Regulated Activities Order (see also PERG 8.24.1AG (Advising on investments)).
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12.4.2 R

Before a firm appoints a person as an appointed representative (other than an introducer appointed representative) and on a continuing basis, it must establish on reasonable grounds that:

(1) the appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions;

(2) the person:
   (a) is solvent;
   (b) is otherwise suitable to act for the firm in that capacity; and
   (c) has no close links which would be likely to prevent the effective supervision of the person by the firm;

(3) the firm has adequate:
   (a) controls over the person’s regulated activities for which the firm has responsibility (see SYSC 3.1 or SYSC 4.1); and
   (b) resources to monitor and enforce compliance by the person with the relevant requirements applying to the regulated activities for which the firm is responsible and with which the person is required to comply under its contract with the firm (see SUP 12.5.3 G (2)); and

(4) the firm is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.2A R

(1) A firm must ensure that:
   (a) a tied agent that is an appointed representative;
   (b) or a MiFID optional exemption appointed representative; or
   (c) a structured deposit appointed representative,
   is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. This does not limit a firm’s obligations under SUP 12.4.2R.

(2) A firm must ensure that its tied agent or MiFID optional exemption appointed representative also possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service for which the firm has accepted responsibility.

[Note: paragraphs 2 and 3 of article 29(3) of MiFID]

12.4.2B G

(1) A firm to which SUP 12.4.2AR applies applies should also have regard to SYSC 5.1 (Skills, knowledge and expertise). The requirements of the Training and Competence sourcebook (TC) and guidance in the Fit and Proper Test for Employees and Senior Personnel (FIT) may also be relevant.
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(2) ESMA has issued guidelines for MiFID investment firms specifying the criteria for the assessment of knowledge and competence. These guidelines are relevant to tied agents (see § SYSC 5.1.5ADG).

12.4.3

In assessing, under § SUP 12.4.2 R (2)(a) and (b), whether an appointed representative or prospective appointed representative is solvent and otherwise suitable, a firm should determine, among other matters, whether the person is likely to be adversely influenced by its financial position in the conduct of the business for which the firm is responsible. This might arise, for example, if the person has cashflow problems and is not able to service its debts. Guidance for firms on assessing the financial position of an appointed representative or prospective appointed representative is given in § SUP 12 Annex 1.

12.4.4

In assessing, under § SUP 12.4.2 R (2)(b), whether an appointed representative or prospective appointed representative is otherwise suitable to act for the firm in that capacity, a firm should consider:

(1) whether the person is fit and proper; guidance on the information that firms should take reasonable steps to obtain and verify is given in § SUP 12 Annex 2; and

(2) the fitness and propriety (including good character and competence) and financial standing of the controllers, directors, partners, proprietors and managers of the person; firms seeking guidance on the information which they should take reasonable steps to obtain and verify should refer to FIT and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in § SUP 10A Annex 4.

12.4.5

In determining, under § SUP 12.4.2 R (2)(c), whether an appointed representative or prospective appointed representative has any close links which would be likely to prevent the firm’s effective supervision, a firm should consider the guidance to threshold condition 2C or 3B as applicable in § COND 2.3.

Appointment representative who may be appointed by other principals

12.4.5A

If a firm proposes to appoint an appointed representative, but not to prohibit its appointment by any other principals (see § SUP 12.5.2 G (3)), the firm should, in particular:

(1) require, in the contract, that the appointed representative notifies the firm about other principals (see § SUP 12.5.5 R (3)) and

(2) unless the appointed representative is an introducer appointed representative:

(a) take reasonable steps to check whether the appointed representative is already appointed by one or more other principals and, if it is, contact those other principals; such steps should include asking the appointed representative and checking the Financial Services Register;
(b) if there are any other principals, agree arrangements with the other principals (see § SUP 12.4.5B R); and

(c) establish effective systems and controls for ensuring that the appointed representative complies with all contractual restrictions imposed, including those relating to multiple principals under the Appointed Representatives Regulations and under § SUP 12.5.6A R (see § SUP 12.6.11A R).

Multiple principals

12.4.5B R

(1) A firm must not appoint a person as its appointed representative until it has entered into a written agreement (a “multiple principal agreement”) with every other principal the person may have; but this does not apply to the appointment of an introducer appointed representative nor does it require an agreement with another principal which has appointed a person as an introducer appointed representative.

(2) A firm must not unreasonably decline to enter into a multiple principal agreement with any principal of his appointed representative unless the firm is relying on a prohibition on the appointed representative from representing any other firms (or is seeking to impose such a prohibition) as permitted by article 3 of the Appointed Representative Regulations.

(3) A multiple principal agreement must contain all the provisions which are necessary or desirable to:

(a) set out the relationship between the principals of that appointed representative; and

(b) protect the interests of clients; including the matters set out in § SUP 12.4.5C.

12.4.5C R

Multiple principal agreement

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<td>The scope of appointment given by each principal to the appointed representative.</td>
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<td>2. Complaints handling</td>
<td>The identity of the principal which will be the point of contact for a complaint from a client (referred to as the “lead-principal” in SUP 12.4.5D G to SUP 12.4.5E G).</td>
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<td>An agreement that each principal will co-operate with each other principal in resolving a complaint from a client in relation to the appointed representative’s conduct.</td>
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<td>The arrangements for complaints handling, including arrangements for resolving disputes between the principals in relation to their liability to a client in respect of a complaint and arrangements for dealing with referrals to the Financial Ombudsman Service.</td>
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<td>3. Financial promotions</td>
<td>The arrangements for approving financial promotion.</td>
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### Matter Explanation

| 4. | Control and monitoring | The arrangements for the control and monitoring of the activities of the appointed representative (see in particular SUP 12.6.6 R (Regulated activities and investment services outside the scope of appointment) and SUP 12.6.7 G (Senior management responsibility for appointed representatives)). |
| 5. | Approved person status | The arrangements for making applications for approved person status (see SUP 10A and SUP 10C (Approved persons) and the corresponding PRA requirements). |
| 6. | Training and competence | The arrangements for training and competence (see TC). |
| 7. | Co-operation | The arrangements for co-operation over any other issues which may arise from the multiple appointments, including issues which may damage the interests of clients dealing with the appointed representative and administrative issues. An agreement by each principal to take reasonable steps to ensure that it does not cause the appointed representative or any of its other principals to be in breach of their obligations to each other or under the regulatory system. |
| 8. | Sharing information | The arrangements for sharing information on matters relevant to the matters covered under the multiple principal agreement and each principal's obligations under SUP 12.6 (Continuing obligations of firms with appointed representatives). An agreement that each principal will notify each other principal of any information which is materially relevant to the multiple principal agreement. |

### 12.4.5D

One effect of the multiple principal agreement is to introduce a 'lead-principal' concept in relation to complaints handling for the benefit of the client. For example, where the client has been given advice by an appointed representative who has two principals, and the advice could have led to a transaction being arranged with either principal, the client will know that he may pursue his complaint with (but not necessarily against) one of the principals. Whether he later decides to refer his complaint to the Financial Ombudsman Service, and if so, against which principal, will depend on the circumstances.

### 12.4.5E

1. Under the relevant provisions in COBS, ICOBS and MCOB, the customer will receive details of how to complain to the appointed representative and, when a product is purchased, details of the complaints procedure for the product provider, insurer or home finance provider.

2. Under DISP 1.2.1 R, a firm must among other things, supply summary details of its internal process for dealing promptly and fairly with complaints to the customer when it receives a complaint. In complying with DISP 1.2.1 R, a firm should ensure that the "lead-principal" is clearly identified in the procedures.
(3) The complaints procedure should also explain that the customer has a choice of whether to contact the appointed representative, the "lead-principal" or the product provider, insurer or home finance provider and that the "lead-principal" will be the appropriate point of contact where the customer does not wish to complain about a specific product or is unsure who to contact.

(4) In other words, where the customer, has a doubt who to complain to the "lead-principal" is to be the point of contact for all complaints arising out of the activities of the appointed representative.

12.4.5F When considering the provisions for complaints handling (see SUP 12.4.5C(2)) firms should consider the use of a mediation clause. If a complaint is made by a client, principals which are unable to resolve a dispute about liability to the client should consider all quick and effective ways of resolving the dispute, including referring the matter to the Financial Ombudsman Service and mediation.

12.4.5G It is for the principals to consider in each case whether it would be appropriate to show the multiple principal agreement to their appointed representative, or in some circumstances make their appointed representative a party to it.

Appointment of an introducer appointed representative

12.4.6 Before a firm appoints a person as an introducer appointed representative, and on a continuing basis, it must take reasonable care to ensure that:

(1) the person is suitable to act for the firm in that capacity (having regard, in particular, to other persons connected with the person who will be, or who are, directly responsible for its activities); and

(2) the firm is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.7 In assessing, under SUP 12.4.6 R(1), whether an introducer appointed representative or prospective introducer appointed representative is otherwise suitable to act for the firm in that capacity, the firm should determine whether the introducer appointed representative and those persons who will be, or who are, directly responsible for its activities are of sufficiently good reputation and otherwise fit and proper for that appointment. The firm should, as a minimum, verify the identity of a prospective introducer appointed representative and relevant persons but need not carry out the more extensive due diligence required for the appointment of an appointed representative under SUP 12.4.2 R.

12.4.8 If a firm has doubts that a prospective introducer appointed representative or other person is of sufficiently good reputation and otherwise fit and proper, the FCA will expect it to resolve those doubts before appointing the prospective introducer appointed representative. For example, if a firm is aware that a person's previous appointment as an introducer appointed representative or representative was terminated, it should take reasonable
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steps to find out the reasons for the termination and the extent to which those reasons reflect on the person concerned.

Good repute

12.4.8 A R

Before a firm appoints a person as an appointed representative to carry on insurance distribution activity, it must in relation to insurance distribution activity ensure that the person will comply on appointment, and will continue to comply with, the provisions of SYSC 28.3 (Good repute) as if the appointed representative were a firm.

[Note: article 10(3) of the IDD]

12.4.8AA R

A firm that has appointed an appointed representative to carry on insurance distribution activity must ensure that the appointed representative:

(1) establishes, maintains and keeps appropriate records to demonstrate compliance with SYSC 28.3 (Good repute); and

(2) provides the name of the person responsible for the record-keeping requirement in (1) to the firm.

Knowledge and ability requirements

12.4.8AB G

SYSC 28.1 (Minimum knowledge and ability requirements for carrying out insurance distribution activities), SYSC 28.2 (Knowledge and ability requirements) and SYSC 28.4 (Record-keeping requirements) apply in relation to a firm’s relevant employees. This includes its appointed representatives and their employees.

[Note: articles 10(1), 10(2) and last paragraph of article 10(8) of the IDD]

12.4.8B G
[deleted]

Close links

12.4.8C R

Before a firm appoints an appointed representative who does not already appear on the Financial Services Register ("A") to carry on insurance distribution activity, it must obtain from A the following information:

(1) the identities of shareholders or members, whether natural or legal persons, that have a holding in A that exceeds 10% and the amount of those holdings;

(2) the identities of persons who have close links with A; and

(3) that those holdings or close links do not prevent the effective supervision of A by the firm.

[Note: article 3(6) of the IDD]

12.4.9 G

(1) An appointed representative must not commence an insurance distribution activity until they are included on the Financial Services Register as carrying on such activities (see SUP 12.5.2 G (3)).
(2) If an appointed representative's scope of appointment is to include an **insurance distribution activity**, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see [SUP 12.7.1 R (1)]).

(3) As an exception, pre-notification is not required if the appointed representative is already included on the Financial Services Register as carrying on **insurance distribution activities** in another capacity (for example, as the appointed representative of another principal).

(1) The FCA has the power to decide not to include on the Financial Services Register (or to remove from the Financial Services Register) an appointed representative whose scope of appointment includes an **insurance distribution activity**, if it appears to the FCA that he is not a fit and proper person to carry on those activities (article 95 of the Regulated Activities Order).

(2) If the FCA proposes to use the power in (1), it must give the appointed representative a **warning notice**. If the FCA decides to proceed with its proposal, it must give the appointed representative a **decision notice**. The procedures followed by the FCA in relation to the giving of **warning notices** and **decision notices** are set out in [DEPP 2].

(3) An appointed representative may apply to the FCA for a determination of the kind referred to in (1) to be revoked. If the FCA proposes to refuse the application, it must give the appointed representative a **warning notice**, and if the FCA decides to proceed with the refusal, it must give the appointed representative a **decision notice**.

### Appointed representative carrying on MCD credit intermediation activity

Before a **firm** appoints a **person** as an appointed representative to carry on a **MCD credit intermediation activity**, it must ensure that the **person** has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the **rules** applicable to **MCD credit intermediaries**. A **firm** will satisfy this requirement if:

1. the appointed representative has professional indemnity insurance which satisfies the rules in [MIPRU 3.2] applicable to the activities of the appointed representative, as if the appointed representative were an MCD credit intermediary;

2. professional indemnity insurance which would satisfy the requirements of [SUP 12.4.10AR (1)] is provided by the **firm**;

3. the appointed representative holds a comparable guarantee (as understood by reference to [MIPRU 3.1.1R (3)(b)]) provided by the **firm**.

**Note:** article 31(2) of the MCD

(1) Before a **firm** appoints a **person** as an appointed representative to carry on **MCD credit intermediation activity** and on a continuing basis after appointment, it must, in relation to such activities, ensure that:
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(a) if the appointed representative is an individual, the individual:

(i) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

(ii) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and

(iii) possesses the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative;

(b) if the appointed representative is a body corporate, the members of the board of the appointed representative, and persons performing equivalent tasks:

(i) have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

(ii) have not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and

(iii) possess the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative.

[Note: article 31(2) of the MCD]

12.4.10C G

(1) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1 R (1)).

(2) An appointed representative must not commence an MCD credit intermediation activity until they are included on the Financial Services Register.

(3) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the Act provides that that appointed representative's principal may not be a tied MCD credit intermediary.

Appointment of an FCA registered tied agent

12.4.11 R

If a UK MiFID investment firm appoints an FCA registered tied agent, SUP 12.4.2 R and SUP 12.4.2A R apply to that firm as though the FCA registered tied agent were an appointed representative.
Tied agents

12.4.12

(1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FCA is the applicable register for these purposes. If the tied agent is established in another EEA State, the applicable register is that maintained by the competent authority in the EEA State in which the tied agent is established.

(2) A UK MiFID investment firm that appoints an FCA registered tied agent who is not registered with the FCA will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the Act (see section 39A(6)(c) and (d) of the Act).

(3) A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State.

(4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established.

(5) If an appointed representative’s scope of appointment is to include acting as a tied agent, the principal must notify the FCA of the appointment before the appointed representative starts acting as such (see SUP 12.7.7 R (1A)).

(6) A tied agent can only act as such for one MiFID investment firm or third country investment firm (see SUP 12.5.6A R (1A)).

MiFID optional exemption appointed representatives and structured deposit appointed representatives

12.4.13

(1) A MiFID optional exemption appointed representative or a structured deposit appointed representative may not start to act as such until it is included on the Financial Services Register (sections 39(1A) and 39(1AA) of the Act).

(2) A firm must notify the FCA of the appointment of a MiFID optional exemption appointed representative or a structured deposit appointed representative before such appointed representative starts acting in that capacity (SUP 12.7.1R).

Reporting of information about Directory persons

12.4.14

(1) SUP 16.26 (Reporting of information about Directory persons) requires an SMCR firm that has appointed an appointed representative to report information to the FCA in respect of any individual who is an appointed representative Directory person.
(2) The SMCR firm should ensure that appropriate arrangements are in place so that the SMCR firm is able to report all relevant information about each such appointed representative Directory person to the FCA within the specified timeframes, in accordance with the requirements of SUP 16.26 (Reporting of information about Directory persons).