

Chapter 12

Appointed representatives

12.5 Contracts: required terms

Required contract terms for all appointed representatives

- 12.5.1** G The *Appointed Representatives Regulations* include, among other things, the prescribed requirements applying to contracts between *firms* and *appointed representatives* for the purposes of section 39(1)(a)(ii) of the Act.
- 12.5.2** G
- (1) Regulations 3(1) and (2) of the *Appointed Representatives Regulations* make it a requirement that the contract between the *firm* and the *appointed representative* (unless it prohibits the *appointed representative* from representing other counterparties) contains a provision enabling the *firm* to:
 - (a) impose such a prohibition; or
 - (b) impose restrictions as to the other counterparties which the *appointed representative* may represent, or as to the types of *investment* in relation to which the *appointed representative* may represent other counterparties.
 - (1A) [deleted]
 - (2) Under the *Appointed Representatives Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:
 - (a) makes arrangements (within article 25 of the *Regulated Activities Order*) for *persons* to enter into investment transactions with other counterparties; or
 - (b) *arranges the safeguarding and administration of assets* by other counterparties; or
 - (c) gives advice (within article 53(1) of the *Regulated Activities Order* (Advising on investments)) on the merits of entering into investment transactions with other counterparties;
 - (d) *assists in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);

where an "investment transaction" means a transaction to *buy, sell, subscribe for or underwrite a security or a relevant investment* (that is, a *designated investment* (other than a *P2P agreement*), *structured deposit* (where applicable), *funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan; or
 - (e) *arranges:*

- (i) for *persons* to enter (or with a view to *persons* entering) as customers into *home finance transactions* (or as plan providers in the case of a *home reversion plan*) with other counterparties;
 - (ii) for a *person* to vary a *home finance transaction* entered into by a *person* as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of any other *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties;
- (f) gives advice (within articles 53A, 53B or 53C of the *Regulated Activities Order*) on the merits of:
 - (i) *persons* entering as customers into *home finance transactions* (or as plan provider in the case of a *home reversion plan*) with other counterparties;
 - (ii) *persons* varying *home finance transactions* entered into by them as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of any other *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties;
- (g) giving *basic advice* on a *stakeholder product*;
- (h) effects introductions (within article 36A (Credit broking) of the *Regulated Activities Order*) of *individuals* to other counterparties;
- (i) facilitates *persons* becoming the *lender* and *borrower* under an article 36H agreement (within the meaning of the *Regulated Activities Order*) on behalf of other counterparties;
- (ia) facilitates a *person* assuming the rights of the *lender* under an article 36H agreement (within the meaning of the *Regulated Activities Order*) by assignment or operation of law on behalf of other counterparties;
- (j) carries on any of the other activities specified in article 36H(3) of the *Regulated Activities Order* on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the *appointed representative* or its principal;
- (ja) gives advice (within article 53(2) of the *Regulated Activities Order*) on the merits of:
 - (i) a *person* entering into a 'relevant article 36H agreement' (within the meaning of the *Appointed Representatives Regulations*) as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law; or
 - (ii) a *person* providing instructions to a *P2P platform operator* with a view to entering into a 'relevant article 36H agreement' as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law, where the instructions involve:
 - (A) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or

- (B) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
 - (C) specifying the parameters of the terms of the agreement by other means; or
 - (iii) a *person* enforcing or exercising the *lender's* rights under a 'relevant article 36H agreement'; or
 - (iv) a *person* assigning rights under a 'relevant article 36H agreement';
 - on behalf of other counterparties;
 - (k) takes steps (within article 39D (Debt adjusting) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (l) gives advice to a *borrower* (within article 39E (Debt-counselling) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (m) takes steps (within article 39F (Debt-collecting) of the *Regulated Activities Order*) to procure the payment of debts on behalf of other counterparties;
 - (n) performs duties (within article 39G (Debt administration) of the *Regulated Activities Order*) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;
 - (na) gives advice (within article 53E of the *Regulated Activities Order* (Advising on conversion or transfer of pension benefits)) on behalf of other counterparties;
 - (o) enters into *regulated credit agreement* or exercises or has the right to exercise the *lender's* rights and duties under such agreements (within article 60B (Regulated credit agreements) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (p) enters into *regulated consumer hire agreements* or exercises, or has the right to exercise, the *owner's* rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the *Regulated Activities Order*) on behalf of other counterparties;
 - (q) takes steps on behalf of, or gives advice to, an *individual* in relation to the taking of any steps (in circumstances constituting the carrying on of *providing credit information services*) on behalf of other counterparties.
- (3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* contains a provision providing that the *appointed representative* is not permitted or required to carry on such business unless included in the *Financial Services Register* as carrying on *insurance distribution activities*.

12.5.2A G [deleted] [Editor's note: This provision now appears at SUP 12.5.12G.]

- 12.5.3** **G** (Subject to **■ SUP 12.5.13G**) a *firm* should satisfy itself that the terms of the contract with its *appointed representative* (including an *introducer appointed representative*):
- (1) are designed to enable the *firm* to comply properly with any *limitations or requirements* on its own *permission*;
 - (2) require the *appointed representative* to cooperate with the *FCA* as described in **■ SUP 2.3.4 G** (Information gathering by the *FCA* on its own initiative: cooperation by firms) and give access to its premises, as described in **■ SUP 2.3.5 R (2)**;
 - (3) require the *appointed representative* to give the *firm's* auditors the same rights as are provided by section 341 of the *Act*; and
 - (4) require the *appointed representative* to provide the *firm* with such information as is necessary to enable the *firm* to comply with its obligations under this chapter (**■ SUP 12**), including, without limitation:
 - (a) as to any matters which might require the *firm* to undertake a review under **■ SUP 12.6A.3R**;
 - (b) to enable the *firm* to comply with its reporting and notification obligations in **■ SUP 12.7**.
- 12.5.3A** **G** [deleted] [*Editor's note*: This provision now appears at SUP 12.5.13G.]
- 12.5.4** **G** A *firm* should have the ability to terminate the contract with its *appointed representative* in the circumstances in **■ SUP 12.6.1R(2)**. However, such a termination provision should not be automatic (see **■ SUP 12.8.3R(1)**). **■ SUP 12.5.5R(4)** also requires that the *firm* be able to terminate the contract in the event that the *firm* determines that it is no longer able to effectively oversee the activities of the *appointed representative*.
- 12.5.5** **R** A *firm* must ensure that its written contract with each of its *appointed representatives*:
- (1) complies with the requirements prescribed in regulation 3 of the *Appointed Representatives Regulations* (see **■ SUP 12.5.2 G**);
 - (2) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract of services or a contract for service comply, with the relevant requirements in or under the *Act* (including the *rules*) that apply to the activities which it carries on as *appointed representative* of the *firm*;
 - (2A) (where the scope of appointment of the *appointed representative* includes *CBTL business*) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract for service comply, with the requirements of and arising under Part 3 of the *MCD Order*;
 - (3) (unless the written contract prohibits appointments by other *principals*) requires the *appointed representative* to notify the *firm*:

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- (a) that it is seeking appointment as an *appointed representative* of another *person*, who the *person* is and the business for which the other *person* will accept responsibility;
- (b) (as soon as possible) of any change in the business notified under (a); and
- (c) (as soon as possible) of the termination of any such appointment; and
- (4) enables the *firm* to terminate the contract in the event that the *firm* determines, pursuant to its continuing obligation in ■ SUP 12.4.2R, ■ SUP 12.4.6R or ■ SUP 12.4.8AR that it is no longer able to adequately oversee the activities of the *appointed representative*.

- (1) If the *appointed representative* is appointed to give *advice on investments* to *retail clients* concerning *packaged products*, the *firm* should also satisfy itself that the contract requires compliance with the *rules* in ■ COBS 6 or ■ COBS 6.1ZA (Information about the firm, its services and remuneration).
- (2) The contractual requirements in ■ SUP 12.5.5 R should extend to:
 - (a) the activities of the *appointed representative*, if the appointed representative is an individual; and
 - (b) the activities of the *employees of, representatives and introducers* appointed by, the *appointed representative*.

Prohibition of multiple principals for certain activities

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- (1) A *firm* must ensure that, if appointing an *appointed representative* (other than an *introducer appointed representative*), to carry on any of the following regulated activities, its written contract prohibits the *appointed representative* from carrying on any of the specified activities as an *appointed representative* for another *firm*:
 - (a) any *designated investment business* for *retail clients*: the prohibition must cover all *designated investment business* for *retail clients*;
 - (b) any *regulated mortgage activities* (other than in relation to *lifetime mortgages*): the prohibition must cover all regulated mortgage activities (other than *lifetime mortgages*);
 - (c) any *regulated mortgage activities* in relation to *lifetime mortgages*: the prohibition must cover all *lifetime mortgages*;
 - (d) any *reversion activities*: the prohibition must cover all *reversion activities*;
 - (e) any *home purchase activities*: the prohibition must cover all *home purchase activities*.
- (1A) If the *appointed representative* is a *tied agent*, the prohibition must prevent the *appointed representative* acting as a *tied agent* for any other *MiFID investment firm* or *third country investment firm*.
- (1B) In relation to any *MCD credit intermediation activity*, the prohibition must prevent the *appointed representative* acting as an *appointed*

		<p><i>representative</i> in respect of <i>MCD credit intermediation activity</i> for any other <i>firm</i>.</p> <p>(2) As an exception to (1), if the <i>firm</i> is a <i>long-term insurer</i> or an operator of a <i>UCITS scheme</i>, it may permit an <i>appointed representative</i> to carry on <i>designated investment business</i> as the <i>appointed representative</i> of one or more other <i>firms</i> provided that:</p> <p>(a) each of those other <i>firms</i> is a <i>long-term insurer</i> or an operator of a <i>UCITS scheme</i>;</p> <p>(b) the first <i>firm</i> and each of those other <i>firms</i> is a member of the same group; "group" means for this purpose a group of <i>bodies corporate</i> all having the same <i>holding company</i> including the <i>holding company</i>; and</p> <p>(c) the scope of each appointment does not overlap, as to both activities and <i>investments</i>.</p> <p>[Note: articles 4(1)(29) and 29(1) of <i>MiFID</i>]</p>
12.5.6B	G	<p>(1) The effect of ■ SUP 12.5.6A R (1)(a) is that, in relation to <i>designated investment business with retail clients</i>, <i>appointed representatives</i> are restricted to one <i>principal</i>.</p> <p>(1A) The effect of ■ SUP 12.5.6A R (1A) is that <i>tied agents</i> are restricted to one <i>principal</i> when acting as such. A <i>tied agent</i> who has a <i>MiFID investment firm</i> or a <i>third country investment firm</i> as a principal may have other principals who are not <i>MiFID investment firms</i> or <i>third country investment firms</i>.</p> <p>(2) The effect of the rule prohibiting multiple principals for certain activities is that, in relation to <i>home finance activities</i>, <i>appointed representatives</i> are restricted to having four <i>principals</i>: one for <i>regulated mortgage contracts</i> other than <i>lifetime mortgages</i>, one for <i>lifetime mortgages</i>, one for <i>home reversion plans</i> and one for <i>home purchase plans</i>. However, if any of the business of the <i>appointed representative</i> involves <i>MCD credit intermediation activity</i>, the <i>appointed representative</i> is restricted to having one <i>principal</i> in relation to that business.</p>
12.5.6C	G	<p>As ■ SUP 12.5.6A R does not apply to <i>non-investment insurance contracts</i>, there are no restrictions on the number of <i>principals</i> an appointed representative may have in relation to those contracts.</p>
12.5.7	R	<p>Required contract terms for an introducer appointed representative</p> <p>A <i>firm</i> must ensure that its written contract with each of its <i>introducer appointed representatives</i> limits the scope of the appointment to:</p> <p>(1) effecting introductions to the <i>firm</i> or other members of the <i>firm's group</i>; and</p> <p>(2) distributing <i>non-real time financial promotions</i> which relate to products or services available from or through the <i>firm</i> or other members of the <i>firm's group</i>.</p>

12.5.8	R	<p>Required contract terms for FCA registered tied agents</p> <p>If a <i>MiFID investment firm</i> appoints an <i>FCA registered tied agent</i>, SUP 12.5.6A R (1A) applies to that <i>firm</i> as though the <i>FCA registered tied agent</i> were an <i>appointed representative</i>.</p> <p>[Note: articles 4(1)(29) and 29(1) of <i>MiFID</i>]</p>
12.5.9	G	<p>Required contract terms for FCA registered tied agents</p> <p>Under section 39A(6)(a) of the <i>Act</i> a <i>MiFID investment firm</i> must ensure that the contract it uses to appoint an <i>FCA registered tied agent</i> complies with the requirements that would apply under the <i>Appointed Representatives Regulations</i> if it were appointing an <i>appointed representative</i>.</p>
12.5.10	R	<p>Required contract terms for appointed representatives of MCD credit intermediaries</p> <p>A <i>firm</i> must ensure that, if appointing an <i>appointed representative</i> to carry on <i>MCD credit intermediation activity</i>, its written contract requires the <i>appointed representative</i> to provide such evidence to the <i>FCA</i> as to the knowledge and competence of the staff of the <i>appointed representative</i>, as the <i>FCA</i> may require from time to time.</p> <p>[Note: article 9(4) of the <i>MCD</i>]</p>
12.5.11	R	<p>Required contract terms for appointed representatives carrying on insurance distribution activity</p> <p>A <i>firm</i> must ensure that, if appointing an <i>appointed representative</i> to carry on <i>insurance distribution activity</i>, its written contract requires the <i>appointed representative</i> to inform the <i>firm</i> of any change to the information obtained by the <i>firm</i> from the <i>appointed representative</i> in accordance with SUP 12.4.8CR.</p> <p>[Note: second paragraph of article 3(6) of the <i>IDD</i>]</p> <p>[Editor's note: The provisions at SUP 12.5.12G and SUP 12.5.13G are not new text; they are moved from SUP 12.5.2AG and SUP 12.5.3AG respectively.]</p>
12.5.12	G	<p>Required contract terms for tied agents, MiFID optional exemption appointed representatives and structured deposit appointed representatives</p> <p>If:</p> <ol style="list-style-type: none"> (1) a <i>MiFID investment firm</i> or a <i>third country investment firm</i> appoints an <i>appointed representative</i> that is a <i>tied agent</i> or a <i>MiFID optional exemption appointed representative</i>, regulation 3(6) of the <i>Appointed Representatives Regulations</i> requires the contract between the <i>firm</i> and the <i>appointed representative</i> to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in section 39(7) of the <i>Act</i> while entered on the Register; (2) a <i>firm</i> appoints an <i>appointed representative</i> that is a structured deposit <i>appointed representative</i>, regulation 3(6) of the <i>Appointed Representatives Regulations</i> requires the contract between the <i>firm</i>

and the *appointed representative* to contain a provision that the representative is only permitted to sell, or advise *clients* on, *structured deposits* while entered on the Register.

Required contract terms for appointed representatives engaging in CBTL business

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To the extent that the appointment of the *appointed representative* includes *CBTL business*, a *firm* should satisfy itself that the terms of the contract with its *appointed representative*:

- (1) are designed to enable the *firm* to comply properly with any direction issued or imposed under article 19 of the *MCD Order*; and
- (2) require the *appointed representative* to deal with the *FCA* in an open and co-operative manner and give access to its premises, as set out in ■ SUP 2.3.4G and ■ SUP 2.3.5R(2), as applied by ■ SUP 2.1.2AG.