INSURANCE MEDIATION AND MORTGAGE MEDIATION, LENDING AND ADMINISTRATION (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2004

Powers exercised
A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
   (1) section 59 (Approval for particular arrangements);
   (2) section 138 (General rule-making power);
   (3) section 139 (Miscellaneous ancillary matters);
   (4) section 156 (General supplementary powers); and
   (5) section 157 (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement
C. This instrument comes into force as indicated in this table:

<table>
<thead>
<tr>
<th>Annex</th>
<th>Date</th>
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<tbody>
<tr>
<td>Annex A</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see note)</td>
</tr>
<tr>
<td>Annex B</td>
<td>14 January 2005</td>
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<tr>
<td>Annex C</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see note)</td>
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<td>Annex D</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see note)</td>
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<tr>
<td>Annex E</td>
<td>14 January 2005</td>
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</tbody>
</table>

Note - to the extent that a provision relates to any regulated activity in relation to a long-term care insurance contract or a regulated mortgage activity, it comes into force on 31 October 2004. Otherwise it comes into force on 14 January 2005.

Amendments to the Handbook
D. The Authorisation manual is amended in accordance with Annex A to this instrument.
E. The Supervision manual is amended in accordance with Annex B to this instrument.
F. The Integrated Prudential sourcebook is amended in accordance with Annex C to this instrument.
G. The Interim Prudential sourcebook for Investment Businesses is amended in accordance with Annex D to this instrument.
H. The Training and Competence sourcebook is amended in accordance with Annex E to this instrument.

Citation
I. This instrument may be cited as the Insurance Mediation and Mortgage Mediation, Lending and Administration (Miscellaneous Amendments) Instrument 2004.

By order of the Board
16 September 2004
Annex A

Amendments to the Authorisation manual

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003 (FSA 2003/72) and the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (FSA 2004/01).)

AUTH 5 Annex 3

Table: G

<table>
<thead>
<tr>
<th>SUP 12 (Appointed representatives)</th>
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<tbody>
<tr>
<td>Applies only if the firm has permission to carry on designated investment business, insurance mediation activity or mortgage mediation activity and wishes to appoint, or has appointed, an appointed representative (SUP 12.1.1R(1)).</td>
<td>As column (2).</td>
</tr>
</tbody>
</table>

...  

AUTH Appendix 4

4.3.8 G It follows that whether or not any particular person may be carrying on a regulated mortgage activity ‘by way of business’ will depend on his individual circumstances. However, some typical examples where the applicable business test would be likely to be satisfied are where a person:

(1) enters into one or more regulated mortgage contracts as lender in the expectation of receiving interest or another form of payment that would enable him to profit from his actions or recover the cost of taking them;

...

4.4.1 G Article 61(3)(a) of the Regulated Activities Order defines a regulated mortgage contract as a contract which, at the time it is entered into, satisfies the following conditions:

...
(2) the contract provides for the obligation of the borrower to repay is to be secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom; and

Provision of credit

4.4.1A G (1) Article 61(3)(c) of the Regulated Activities Order states that credit includes a cash loan and any other form of financial accommodation. Although 'financial accommodation' has a potentially wide meaning, its scope is limited by the terms used in the definition of a regulated mortgage contract set out in AUTH App 4.4.1G. Whatever form the financial accommodation may take, article 61(3)(a) envisages that it must involve an obligation to repay on the part of the individual who receives it.

(2) In the FSA's view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the person who provides it (the 'lender'). Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the person providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it. An example of this would be the issue of a guarantee by a bank to a third party for an individual customer (such as a rent guarantee or a performance bond) where the guarantee is secured on a first legal charge over the customer's residential property. In the FSA's view, this would amount to a regulated mortgage contract as the customer would owe a debt to the bank in the event that the bank had to pay the third party under the guarantee.

4.4.8 G The requirement that at least 40% of the land area be used as or in connection with a dwelling means that ‘buy to let’ loans secured on the property to be let are usually excluded, unless such loans will not be excluded if:

(1) the lessee is a ‘related person’ to the borrower. This will be the case even if the borrower subsequently takes possession of the property, the loan will still not become a regulated mortgage contract, as the conditions set out in AUTH App 4.4.1G(1) to (3) were not satisfied at the outset of the contract (see AUTH App 4.4.3G); or

(2) at the time the contract is entered into, the borrower has a real intention to use the land as, or in connection with, a dwelling (for example a member of the British Forces Posted Overseas who buys a property in the United Kingdom intending to live there on his return but which he lets out in the meantime).
4.4.12 G A number of products, however, are excluded from the definition, such as:

(3) so-called ‘home reversion schemes’, under which a property owner (usually an older person) sells some or all of his interest in the property in return for a lump sum (usually a proportion of the value of the property sold) and a right to reside at the property for the rest of his life. (It should be noted, however, that the Treasury announced in May 2004 that 'home reversion schemes' are to be regulated by the FSA and that it would be introducing legislation to this effect.)

Exclusion: article 25A(1)(b) and (2) arrangements made in the course of administration by authorised person

4.5.9 G Article 29A of the Regulated Activities Order excludes from both article 25A(1)(b) (which covers making arrangements for another person to vary the terms of a regulated mortgage contract) and (2) certain activities of an unauthorised person who is taking advantage of the exclusion from administering a regulated mortgage contract in article 62 (Exclusion: arranging administration by authorised persons) (see AUTH App 4.8.4G).

4.6.30 G The main exclusion from advising on regulated mortgage contracts relates to advice given …

(2) enter as borrower into regulated mortgage contracts or vary the terms of regulated mortgage contracts entered into by such persons as the borrower.

4.13.1 G Certain named persons are exempted by the Exemption Order from the need to obtain authorisation. The following bodies are exempt …

(3) housing associations or other bodies corporate registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 by Scottish Homes (paragraph 48(2)(b) of the Schedule to the Exemption Order) but not their subsidiaries;
4.17.15 G Articles 90 and 91 of the Regulated Activities Order include provisions that have the effect of removing from CCA regulation financial promotions about qualifying credit. Such promotions will not, therefore, be subject to Part IV of the CCA, the Consumer Credit (Advertisements) Regulations 1989 and the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999 or regulations made under that Part.

AUTH Appendix 5

5.11.6 G (1) The removal of the exclusion for groups and joint enterprises in article 69 of the Regulated Activities Order (Groups and joint enterprises) may have implications for companies a company providing services for:

(4a) other members of its group; or

(2b) other participants in a joint enterprise of which it is a participant.

(2) Such companies might typically provide risk or treasury management or administration services which may include regulated activities relating to a contract of insurance. If so, such companies will need authorisation or exemption if they conduct the activities by way of business (see AUTH App 5.4 (The business test) generally and (3) and (4)). This is unless another exclusion applies.

(3) In the FSA's view, particular issues arise in applying the by way of business test to group companies. Recital 11 of the Insurance Mediation Directive states that the Directive should apply to persons whose activity consists in providing insurance mediation services to third parties for remuneration. This suggests that the Directive is intended to apply only where the service is provided to a third party. The expression 'third party' is not defined in the Directive. The FSA considers that a group company that is providing services solely for the benefit of other group companies would not normally be regarded as providing services to a third party. The FSA also considers that, as a result, a group company providing services solely for the benefit of other group companies should not normally be regarded as satisfying the requirement that it be remunerated for providing insurance mediation services to third parties. Were a group company to be remunerated other than by another group company, however, the situation may be different. For example, if the group company receives commission from an insurer or broker, that fact would tend to suggest that the company has been rewarded
for providing a service to the insurer or broker. In the FSA's view, it is appropriate to apply this principle to a group as defined in section 421 (Group) of the Act.

(4) The FSA considers that similar principles to those applied to a group company in (2) may be applied to the participants in a joint enterprise. This would be where one participant in the joint enterprise is providing services solely for the benefit of another participant and for the purposes of the joint enterprise. This extends to any person in the same group as a participant in a joint enterprise and who provides insurance mediation services to one or more participants for the purposes of or in connection with the joint enterprise.

5.11.9 G Article 67 excludes from the activities of dealing as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, and assisting in the administration and performance of a contract of insurance and advising on investments, any activity which:

5.11.16 G Article 72D (Large risks contracts where risk situated outside the EEA) provides an exclusion for large risks situated outside the EEA. Broadly speaking, these are risks relating to:

(3) risks relating to land vehicles, fire and natural forces, property damage, motor vehicle liability where the policyholder is a business of a certain size;

(4) certain financial loss where the policyholder is a business of a certain size.

For a fuller definition …

5.13.4 G Table: insurance mediation activities able to be carried on by an appointed representative. This table belongs to AUTH App 5.13.3G.
<table>
<thead>
<tr>
<th>Type of insurance contract</th>
<th>Regulated activities an appointed representative can carry on</th>
</tr>
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</table>
| **General insurance contract** | • Dealing in investments as agent;  
• Arranging;  
• Assisting in the administration and performance of a contract of insurance;  
• Advising on investments; and  
• Agreeing to carry on these regulated activities. |
| **Pure protection contract** | • Dealing in investments as agent (but only where the contract is not a long-term care insurance contract);  
• Arranging;  
• Assisting in the administration and performance of a contract of insurance;  
• Advising on investments; and  
• Agreeing to carry on these regulated activities. |
| **Life policy (note that this already has effect prior to 14 January 2005)** | • Arranging;  
• Assisting in the administration and performance of a contract of insurance;  
• Advising on investments; and  
• Agreeing to carry on these regulated activities. |

5.14.5 G In addition to certain named persons exempted by the Exemption Order from the need to obtain authorisation, the following bodies are exempt … …

(3) housing associations or other bodies corporate registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 by Scottish Homes but not their subsidiaries;

5.16 Meaning of insurance mediation

5.16.1 G AUTH App 5.16.2G sets out the text of article 2.3 of the Insurance Mediation Directive. …
Annex B

Amendments to the Supervision manual

In this Annex underlining indicates new text and striking through indicates deleted text.

What the governing functions include

…

10.6.3A G PRU 9.1.3R provides that an insurance intermediary, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm’s insurance mediation activity. PRU 9.1.4R(1) provides that the firm may allocate this responsibility to one or more of the persons performing a governing function (other than the non-executive director function).

…

Business for which an appointed representative is exempt

12.2.7 G (1) The Appointed Representatives Regulations are made by the Treasury under section 39(1) of the Act. These regulations describe, among other things, the business for which an appointed representative may be exempt, which is business which comprises any of:

(a) dealing in investments as agent (article 21 of the Regulated Activities Order) where the transaction relates to a pure protection contract (but only where the contract is not a long-term care insurance contract) or general insurance contract;

…

(f) assisting in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order) where the activity relates to a general insurance contract;

…

12.2.8 G …

(2) The permitted scope of appointment of an introducer appointed representative does not include in particular:

…

(c) assisting in the administration and performance of a contract of insurance where the transaction relates to a general insurance contract; or

…
Under the **Appointed Representative Regulations**, an *appointed representative* is treated as representing other counterparties if, broadly, it:

- **(d)** assists in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order) where the activity relates to a general insurance contract.

If:

- **(a)** the scope of appointment of the *appointed representative* is extended to cover insurance mediation activities for the first time; and
- **(b)** the *appointed representative* is not included on the Register as carrying on insurance mediation activities in another capacity; and or
- **(c)** the scope of appointment of an *appointed representative* ceases to include insurance mediation activity;

the *appointed representative's principal* must give written notice to the FSA of that change before the *appointed representative* begins to carry on insurance mediation activities under the contract (see **SUP 12.4.9G** or as soon as the scope of appointment of the *appointed representative* ceases to include insurance mediation activity.)
Annex C

Amendments to the Integrated Prudential sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.
(This Annex amends in part the text made in the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (2004/01).)

9.1.4 R The firm may allocate the responsibility for its insurance mediation activity under PRU 9.1.3R to an approved person (or persons) performing:

(1) a governing function (other than the non-executive director function); or

...

9.1.5 G (1) Typically an insurance intermediary will appoint a person performing a governing function (other than the non-executive director function) to direct its insurance mediation activity. Where this responsibility is allocated to a person performing another function, the person performing the apportionment and oversight function with responsibility for the apportionment of responsibilities under SYSC 2.1.1R must ensure that the firm’s insurance mediation activity under PRU 9.1.3R is appropriately allocated.

(2) ...

(3) In the case of a sole trader, the sole trader will be responsible for the firm's insurance mediation activity, whether or not he is himself a person approved to perform the sole trader function.

...

9.1.7 G The FSA will specify in the FSA Register the name of the persons to whom the responsibility for the firm’s insurance mediation activity has been allocated under PRU 9.1.3R by inserting after the relevant controlled function the words “(insurance mediation)”. In the case of a sole trader, the FSA will specify in the FSA Register the name of the sole trader as the 'contact person' in the firm.

...

9.2.8 G The minimum limits of indemnity for a firm whose Part IV permission covers more than one regulated activity within the scope of this section will need to comply with is the higher of the limits of indemnity as set out in PRU
9.2.13 R and the limits of indemnity as set out in PRU 9.2.15 R. If the firm opts for a single comparable guarantee to finance the claims which might arise as a result of both activities, the provisions set out in PRU 9.2.1 R(3) apply. Professional indemnity insurance requirements for each of these activities. However, this does not necessarily mean that the firm should purchase two or more separate contracts of insurance. It could, for example, purchase one contract that covers all of its activities, but which contains separate limits of indemnity and excesses for each individual activity.

Minimum limits of indemnity: insurance intermediary mediation activity

... 

9.2.13 R In relation to insurance mediation activity, If the firm is an insurance intermediary, then the minimum limits of indemnity referred to in PRU 9.2.10 R(2) are:

... 

Minimum limits of indemnity: mortgage intermediary mediation activity

9.2.15 R In relation to mortgage mediation activity, If the firm is a mortgage intermediary, then the minimum limit of indemnity referred to in PRU 9.2.10 R(2) is the higher of 10% of annual income (see PRU 9.3.42 R) up to £1 million, and:

(1) ... 

... 

9.3.45 G (1) The purpose of PRU 9.3.44 R is to ensure that the capital resources requirement is calculated on the basis only of brokerage and other amounts earned by a firm which are its own income.

(2) For the purposes of PRU 9.3.43 R and PRU 9.3.44 R, a firm's annual income includes commissions and other amounts the firm may have agreed to pay to other persons involved in a transaction, such as sub-agents or other intermediaries.

(3) A firm's annual income does not, however, include any amounts due to another person (for example, the product provider) which the firm has collected on behalf of that other person.
Annex D

Amendments to the Interim Prudential sourcebook for Investment Businesses

In this Annex underlining indicates new text and striking through indicates deleted text.

Chapter 13: Financial Resources Requirements for Personal Investment Firms
Appendix 13(1) – Defined terms for Chapter 13

... 

Category A3 firm a Category A firm whose permission includes only insurance mediation activity in relation to non-investment insurance contracts, mortgage mediation activity, assisting in the administration and performance of contracts of insurances, arranging transactions in investments, advising on investments and, if applicable managing investments; 

... 

Category B3 firm a Category B firm whose permission includes only insurance mediation activity in relation to non-investment insurance contracts, mortgage mediation activity, assisting in the administration and performance of contracts of insurances, arranging transactions in life policies and other insurance contracts, advising on investments and receiving and transmitting, on behalf of investors, orders in relation to securities and units in collective investment schemes;
Annex E

Amendments to the Training and Competence sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

2.1.2 R (1) In relation to designated investment business:

(a) unless (aa) applies, this chapter applies to a UK domestic firm…

(aa) if the designated investment business constitutes insurance mediation activity, this chapter applies to a UK domestic firm in respect of its employees who engage in or oversee activities (to the extent indicated in TC 2.1.4R):

(i) from an establishment maintained by the firm (or its appointed representative) in the United Kingdom; or

(ii) from a branch established in another EEA State;

(b) unless (bb) applies, this chapter applies to an overseas firm…

(bb) if the designated investment business constitutes insurance mediation activity, this chapter does not apply to an overseas firm which is an EEA firm.

...

(3) In relation to insurance mediation activities in respect of non-investment insurance contracts carried on with or for a customer, this chapter applies to any such activity carried on by a UK domestic firm:

(a) from an establishment maintained by the firm (or its appointed representative) in the United Kingdom; or

(b) from a branch established in another EEA State.