

**PRUDENTIAL SOURCEBOOK FOR MORTGAGE AND HOME FINANCE  
FIRMS, AND INSURANCE INTERMEDIARIES INSTRUMENT 2006**

**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 138 (General rule-making powers);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2007.

**Amendments to the Handbook**

- D. The FSA makes the rules and gives the guidance set out in Annexes A to C to this instrument.
- D. The Glossary of Definitions is amended in accordance with Annex D to this instrument.
- E. Other provisions in the FSA's Handbook of rules and guidance are amended in accordance with Annex E to this instrument.

**Citation**

- G. This instrument may be cited as the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries Instrument 2006.
- H. The sourcebook in Annexes A to C to this instrument may be cited as the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (or MIPRU).

By order of the Board  
25 October 2006

## Annex A

### **Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries**

In this annex, all text is new and is not underlined.

### **Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries**

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- 5.2            Use of intermediaries

### **Transitional Provisions and Schedules**

## 1 Application and general provisions

### 1.1 Application

1.1.1 G This sourcebook applies to a *firm* with *Part IV permission* to carry on:

- (1) *insurance mediation activity*;
- (2) *mortgage mediation activity*;
- (3) *mortgage lending*;
- (4) *mortgage administration*; and
- (5) *insurance business*;

as specified in the beginning of each of the remaining chapters.

### 1.2 Actions for damages

1.2.1 R A contravention of the *rules* in this sourcebook does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

- 2 Insurance mediation activity: responsibility, knowledge, ability and good repute
- 2.1 Application and purpose
- Application
- 2.1.1 R This chapter applies to a *firm* with *Part IV permission* to carry on *insurance mediation activity*.
- Purpose
- 2.1.2 G The main purpose of this chapter is to implement, in part, the provisions of the *Insurance Mediation Directive* as these apply to *firms* regulated by the *FSA*.
- 2.2 Allocation of the responsibility for insurance mediation activity
- Responsibility for insurance mediation activity
- 2.2.1 R An insurance intermediary, other than a sole trader, must allocate the responsibility for the *firm's insurance mediation activity* to a director or senior manager.
- [Note: Article 3(1), fourth paragraph, of the *IMD*]
- 2.2.2 R The *firm* may allocate the responsibility for its *insurance mediation activity* to an *approved person* (or *persons*) performing:
- (1) a *governing function* (other than the *non-executive director function*);  
or
  - (2) the *apportionment and oversight function*; or
  - (3) the *significant management (other business operations) function*.
- 2.2.3 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 must ensure that responsibility for the *firm's insurance mediation activity* is appropriately allocated.
  - (2) The descriptions of *significant influence functions*, other than the *required functions*, do not extend to activities carried on by an *insurance intermediary* with *permission* only to carry on *insurance mediation activity* and whose principal purpose is to carry on activities other than *regulated activities* (see *SUP 10.1.21R*). In this case, the *firm* may allocate the responsibility for the *firm's insurance*

*mediation activity* to one or more of the *persons* performing the *apportionment and oversight function* who will be required to be an *approved person*.

- (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*.

2.2.4 G Where a *firm* has appointed an *appointed representative* to carry on *insurance mediation activity* on its behalf, the *person* responsible for the *firm's insurance mediation activity* will also be responsible for the *insurance mediation activity* carried on by an *appointed representative*.

2.2.5 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 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*.

## 2.3 Knowledge, ability and good repute

2.3.1 R An *insurance intermediary* must establish on reasonable grounds that:

- (1) a reasonable proportion of the *persons* within its management structure who are responsible for *insurance mediation activity*; and

- (2) all other *persons* directly involved in its *insurance mediation activity*;

demonstrate the knowledge and ability necessary for the performance of their duties; and

- (3) all the *persons* in its management structure and any staff directly involved in *insurance mediation activity* are of good repute.

[**Note:** Article 4(1) and (2) of the *IMD*]

2.3.2 G In determining a *person's* knowledge and ability, the *firm* should have regard to matters including, but not limited to, whether the *person*:

- (1) has demonstrated by experience and training to be able, or that he will be able, to perform his duties related to the *firm's insurance mediation activity*; and

- (2) satisfies the relevant requirements of the *FSA's* Training and Competence sourcebook.

2.3.3 R In considering a *person's* repute, the *firm* must ensure that the *person*:

- (1) 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

- (2) 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*.

[**Note:** Article 4(2) of the *IMD*]

- 2.3.4 G The *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.
- 2.3.5 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC 3.1.1R*). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (*SYSC 3.2.13G*). This includes the assessment of an individual's honesty and competence. In addition, the Training and Competence sourcebook lists some general, high level commitments to training and competence which every *firm* should make and fulfil.

3 Professional indemnity insurance

3.1 Application and purpose

Application

3.1.1 R This chapter applies to a *firm* with *Part IV permission* to carry on any of the following activities:

(1) *insurance mediation activity*;

(2) *mortgage mediation activity*;

unless any of the following exemptions apply:

(3) in relation to *insurance mediation activity*, this chapter does not apply to a *firm* if another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee; for this purpose:

(a) if the *firm* is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*;

(b) a 'comparable guarantee' means a written agreement on terms at least equal to those in a contract of professional indemnity insurance (see *MIPRU* 3.2.4R) to finance the claims that might arise as a result of a breach by the *firm* of its duties under the *regulatory system* or civil law;

(4) in relation to *mortgage mediation activity*, this chapter does not apply to a *firm* if:

(a) it has net tangible assets of more than £1 million; or

(b) the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (3)(a) and (b);

(5) this chapter does not apply to:

(a) an *insurer*; or

(b) a *managing agent*; or

(c) a *personal investment firm* that is required by another *rule* to hold professional indemnity insurance (see *IPRU(INV)* 13.1.4(1)R);

(6) in relation to *mortgage mediation activity*, this chapter does not

apply to an *authorised professional firm*:

- (a) that is required by another *rule* to hold professional indemnity insurance (see *IPRU(INV)* 2.3.1R); and
- (b) whose *mortgage mediation activity* is incidental to its main business.

3.1.2 G The definition of *insurance mediation activity* is any of several activities 'in relation to a *contract of insurance*' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other *insurance intermediary*.

Purpose

3.1.3 G The purposes of this chapter are to:

- (1) implement article 4.3 of the *Insurance Mediation Directive* in so far as it requires *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and
- (2) meet the *regulatory objectives* of consumer protection and maintaining market confidence by ensuring that *firms* have adequate resources to protect themselves, and their *customers*, against losses arising from breaches in its duties under the *regulatory system* or civil law.

3.1.4 G Any breach in the duty of a *firm* or of its agents under the *regulatory system* or civil law can give rise to claims being made against the *firm*. Professional indemnity insurance has an important role to play in helping to finance such claims. In so doing, this chapter amplifies *threshold condition 4* (Adequate resources). This *threshold condition* provides that a *firm* must have, on a continuing basis, resources that are, in the opinion of the *FSA*, adequate in relation to the *regulated activities* that the *firm* carries on.

3.1.5 G Under *Principles 3* and *4* a *firm* is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources. Under *Principle 9* a *firm* is obliged to take reasonable care to ensure the suitability of its *advice on investments* and discretionary decisions for any *customer* who is entitled to rely upon its judgement.

3.1.6 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day to day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of this chapter is to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.



## 3.2 Professional indemnity insurance requirements

- 3.2.1 R A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from:
- (1) an *insurance undertaking* authorised to transact professional indemnity insurance in the *EEA*; or
  - (2) a *person* of equivalent status in:
    - (i) a *Zone A country*; or
    - (ii) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

[**Note:** Article 4(3) of the *IMD*]

- 3.2.2 G The minimum *limits of indemnity* for a *firm* whose *Part IV permission* covers both *insurance mediation activity* and *mortgage mediation activity* is the higher of the *limits of indemnity* for these activities. If the *firm* opts for a single comparable guarantee to finance the claims which might arise as a result of both activities, the requirements for *insurance mediation activity* apply.

- 3.2.3 G A non-*EEA firm* (such as a captive insurance company outside the *EEA*) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the specified countries or territories. The purpose of this provision is to balance the level of protection required for the *policyholder* against a reasonable level of flexibility for the *firm*.

Terms to be incorporated in the insurance

- 3.2.4 R The contract of professional indemnity insurance must incorporate terms which make provision for:
- (1) cover in respect of claims for which a *firm* may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
  - (2) the minimum *limits of indemnity* per year set out in this section;
  - (3) an excess as set out in this section;
  - (4) appropriate cover in respect of legal defence costs;
  - (5) continuous cover in respect of claims arising from work carried out from the date on which the *firm* was given *Part IV permission* for the *insurance mediation activity* or *mortgage mediation activity* concerned; and
  - (6) cover in respect of *Ombudsman* awards made against the *firm*.

- 3.2.5 G A *firm* is responsible for the conduct of all of its *employees*. The *firm's employees* include, but are not limited to, its *partners, directors*, individuals that are self-employed or operating under a contract hire agreement and any other individual that is employed in connection with its business.
- 3.2.6 G A *firm* is responsible for the conduct of all of its *appointed representatives*.  
Minimum limits of indemnity: insurance intermediary
- 3.2.7 R If the *firm* is an *insurance intermediary*, then the minimum *limits of indemnity* are:
- (1) for a single claim, €1 million; and
  - (2) in aggregate, €1.5 million or, if higher, 10% of *annual income* up to £30 million.
- [Note: Article 4(3) of the *IMD*]
- 3.2.8 R If a *policy* is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the *policy* is effected and at *renewal*, at least equivalent to those required.  
Minimum limits of indemnity: mortgage intermediary
- 3.2.9 R If the *firm* is a *mortgage intermediary*, then the minimum *limit of indemnity* is the higher of 10% of *annual income* up to £1 million, and:
- (1) for a single claim, £100,000; or
  - (2) in aggregate, £500,000.
- Excess
- 3.2.10 R In this chapter, "*client assets*" includes a *document* only if it has value, or is capable of having value, in itself (such as a bearer instrument).
- 3.2.11 R For a *firm* which does not hold *client money* or other *client assets*, the excess must not be more than the higher of:
- (1) £2,500; and
  - (2) 1.5% of *annual income*.
- 3.2.12 R For a *firm* which holds *client money* or other *client assets*, the excess must not be more than the higher of:
- (1) £5,000; and
  - (2) 3% of *annual income*.

Policies covering more than one firm

- 3.2.13 R If a *policy* provides cover to more than one *firm*, then:
- (1) the *limits of indemnity* must be calculated on the combined *annual income* of all the *firms* named in the *policy*; and
  - (2) each *firm* named in the *policy* must have the benefit of the relevant minimum *limits of indemnity*.

Additional capital

- 3.2.14 R If a *firm* seeks to have an excess which is higher than the relevant limit, it must hold additional capital calculated in accordance with the appropriate table below:

Table: Calculation of additional capital for firm not holding client money or other client assets (£000's)

Income		Excess obtained up to and including:													
More than	Up to	2.5	5	10	15	20	25	30	40	50	75	100	150	200+	
0	100	0	5	9	12	14	17	19	23	26	33	39	50	59	
100	200	0	7	12	16	19	22	25	30	34	43	51	64	75	
200	300	0	7	12	16	20	24	27	32	37	47	56	71	84	
300	400	0	0	12	16	21	24	28	34	39	50	60	77	91	
400	500	0	0	11	16	21	24	28	34	40	53	63	81	96	
500	600	0	0	10	16	20	24	28	35	41	54	65	84	100	
600	700	0	0	0	15	20	24	28	35	41	55	67	87	104	
700	800	0	0	0	14	19	24	28	35	42	56	68	89	107	
800	900	0	0	0	13	18	23	27	35	42	56	69	91	109	
900	1,000	0	0	0	0	17	22	27	34	41	57	70	92	111	
1,000	1,500	0	0	0	0	0	21	26	34	41	57	71	97	118	

1,500	2,000	0	0	0	0	0	0	0	0	30	38	56	71	98	121
2,000	2,500	0	0	0	0	0	0	0	0	24	33	53	69	99	126
2,500	3,000	0	0	0	0	0	0	0	0	0	28	50	68	101	130
3,000	3,500	0	0	0	0	0	0	0	0	0	0	47	67	101	132
3,500	4,000	0	0	0	0	0	0	0	0	0	0	43	65	101	133
4,000	4,500	0	0	0	0	0	0	0	0	0	0	39	62	101	134
4,500	5,000	0	0	0	0	0	0	0	0	0	0	0	58	99	134
5,000	6,000	0	0	0	0	0	0	0	0	0	0	0	54	97	133
6,000	7,000	0	0	0	0	0	0	0	0	0	0	0	0	91	131
7,000	8,000	0	0	0	0	0	0	0	0	0	0	0	0	84	126
8,000	9,000	0	0	0	0	0	0	0	0	0	0	0	0	75	120
9,000	10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	113
10,000	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
100,000	n/a	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table: Calculation of additional capital for firm holding client money or other client assets (£000's)

Income	Excess obtained up to and including:													
	Up to	5	10	15	20	25	30	40	50	75	100	150	200+	
More than 0	100	0	4	7	9	12	14	18	21	28	34	45	54	
100	200	0	7	11	14	17	20	25	29	38	46	59	70	
200	300	0	7	11	14	17	20	25	30	40	49	64	77	
300	400	0	0	9	13	16	19	25	30	40	50	67	81	
400	500	0	0	0	11	14	18	24	29	40	51	68	83	

500	600	0	0	0	8	12	15	22	28	40	51	69	85
600	700	0	0	0	0	9	13	20	26	39	50	69	86
700	800	0	0	0	0	6	10	17	24	38	49	69	87
800	900	0	0	0	0	0	7	15	22	36	48	69	87
900	1,000	0	0	0	0	0	0	12	19	34	47	68	87
1,000	1,500	0	0	0	0	0	0	0	16	32	45	67	86
1,500	2,000	0	0	0	0	0	0	0	0	18	34	59	81
2,000	2,500	0	0	0	0	0	0	0	0	0	19	48	71
2,500	3,000	0	0	0	0	0	0	0	0	0	6	37	64
3,000	3,500	0	0	0	0	0	0	0	0	0	0	26	55
3,500	4,000	0	0	0	0	0	0	0	0	0	0	14	45
4,000	4,500	0	0	0	0	0	0	0	0	0	0	1	33
4,500	5,000	0	0	0	0	0	0	0	0	0	0	0	21
5,000	6,000	0	0	0	0	0	0	0	0	0	0	0	8
6,000	7,000	0	0	0	0	0	0	0	0	0	0	0	0
7,000	8,000	0	0	0	0	0	0	0	0	0	0	0	0
8,000	9,000	0	0	0	0	0	0	0	0	0	0	0	0
9,000	10,000	0	0	0	0	0	0	0	0	0	0	0	0
10,000	100,000	0	0	0	0	0	0	0	0	0	0	0	0
100,000	n/a	0	0	0	0	0	0	0	0	0	0	0	0

3.2.15 G The *rule* on the items which are eligible to contribute to the capital resources of a *firm* applies (see *MIPRU* 4.4.2R).

- 4 Capital resources
- 4.1 Application and purpose
- Application
- 4.1.1 R This chapter applies to a *firm* with *Part IV permission* to carry on any of the following activities, unless an exemption in this section applies:
- (1) *insurance mediation activity*;
  - (2) *mortgage mediation activity*;
  - (3) *entering into a regulated mortgage contract* (that is, *mortgage lending*);
  - (4) *administering a regulated mortgage contract* (that is, *mortgage administration*).
- 4.1.2 G As this chapter applies only to a *firm* with *Part IV permission*, it does not apply to an *incoming EEA firm* (unless it has a *top-up permission*). An *incoming EEA firm* includes a *firm* which is passporting into the *United Kingdom* under the *IMD*.
- 4.1.3 G The definition of *insurance mediation activity* refers to several activities 'in relation to a *contract of insurance*' which includes a contract of reinsurance. This chapter, therefore, applies to a reinsurance intermediary in the same way as it applies to any other *insurance intermediary*.
- Application: banks, building societies, insurers and friendly societies
- 4.1.4 R This chapter does not apply to:
- (1) a *bank*; or
  - (2) a *building society*; or
  - (3) a solo consolidated *subsidiary* of a *bank* or a *building society* ; or
  - (4) an *insurer*; or
  - (5) a *friendly society*.
- 4.1.5 G The capital resources of the *firms* above are calculated in accordance with the appropriate prudential sourcebook.
- Application: firms carrying on designated investment business only
- 4.1.6 R This chapter does not apply to a *firm* whose *Part IV permission* is limited to *regulated activities* which are *designated investment business*.

- 4.1.7 G A *firm* which carries on *designated investment business*, and no other *regulated activity*, may disregard this chapter. For example, a *firm* with *permission* limited to *dealing in investments as agent* in relation to *securities* is only carrying on *designated investment business* and the Interim Prudential sourcebook for investment businesses or the Prudential sourcebook for Banks, Building Societies and Investment Firms, as appropriate, will apply. However, if its *permission* is varied to enable it to arrange motor insurance as well, this activity is not *designated investment business* so the *firm* will be subject to the higher of the requirements in this chapter and those sourcebooks (see *MIPRU 4.2.5R*).

Application: credit unions

- 4.1.8 R This chapter does not apply to:
- (1) a 'small *credit union*', that is one with:
    - (a) assets of £5 million or less; and
    - (b) a total number of members of 5,000 or less (see *CRED 8.3.14R*); or
  - (2) a *credit union* whose *Part IV permission* includes *mortgage lending* or *mortgage administration* (or both) but not *insurance mediation activity* or *mortgage mediation activity*.

- 4.1.9 G
- (1) For *credit unions* to which this chapter applies and which are not *CTF providers*, the capital requirements will be the higher of the requirements in this chapter and in the Credit Unions sourcebook (see *MIPRU 4.2.6R*).
  - (2) For *credit unions* to which this chapter applies and which are *CTF providers* with permission to carry on *designated investment business*, the capital requirements will be the highest of the requirements in this chapter, those in the Credit Unions sourcebook and in the Interim Prudential sourcebook for investment businesses (see *MIPRU 4.2.6R*).

Application: professional firms

- 4.1.10 R
- (1) This chapter does not apply to an *authorised professional firm*:
    - (a) whose main business is the practice of its profession; and
    - (b) whose *regulated activities* covered by this chapter are incidental to its main business.
  - (2) A *firm's* main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this

purpose).

- (3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, actuarial, conveyancing and surveying services provided to clients but excluding any items receivable in respect of *regulated activities*.

Application: Lloyd's managing agents

- 4.1.11 R This chapter does not apply to a *managing agent*.
- 4.1.12 G The reason for excluding *managing agents* from the provisions of this chapter is twofold: first, a *member* will have accepted full responsibility for those activities under the *Society's managing agent* agreement. Secondly, the *member* is itself subject to capital requirements which are equivalent to those applying to an *insurer* (to which this chapter is also disappplied).

Application: social housing firms

- 4.1.13 G There are special provisions for a *social housing firm* when it is carrying on *mortgage lending* or *mortgage administration* (see *MIPRU 4.2.7R*).

Purpose

- 4.1.14 G This chapter amplifies *threshold condition 4* (Adequate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement and a minimum capital resources requirement. This chapter also amplifies *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out capital requirements for a *firm* according to the *regulated activity* or activities it carries on.
- 4.1.15 G Capital has an important role to play in protecting consumers and complements the roles played by professional indemnity insurance and *client money* protection (see the *client money rules*). Capital provides a form of protection for situations not covered by a *firm's* professional indemnity insurance and it provides the funds for the *firm's* PII excess, which it has to pay out of its own finances (see *MIPRU 3.2.11R* and *MIPRU 3.2.12R* for the relationship between the *firm's* capital and its excess).
- 4.1.16 G More generally, having adequate capital gives the *firm* a degree of resilience and some indication to consumers of creditworthiness, substance and the commitment of its owners. It reduces the possibility of a shortfall of funds and provides a cushion against disruption if the *firm* ceases to trade.
- 4.1.17 G There is a greater risk to consumers, and a greater adverse impact on market confidence, if a *firm* holding *client money* or other *client* assets fails. For this reason, the capital resources *rules* in this chapter clearly distinguish between *firms* holding *client* assets and those that do not.

Purpose: social housing firms



- 4.1.18 G *Social housing firms* undertake small amounts of mortgage business even though their main business consists of activities other than *regulated activities*. Their *mortgage lending* is only done as an adjunct to their primary purpose (usually the provision of housing) and is substantially different in character to that done by commercial lenders. Furthermore, they are *subsidiaries* of local authorities or registered social landlords which are already subject to separate regulation. The *FSA* does not consider that it would be proportionate to the risks involved with such business to impose significant capital requirements for these *firms*. The capital resources requirement for *social housing firms* therefore simply provides that, where their *Part IV permission* is limited to *mortgage lending* and *mortgage administration*, their net tangible assets must be greater than zero.
- 4.1.19 G A registered social landlord is a non-profit organisation which provides and manages homes for rent and sale for people who might not otherwise be able to rent or buy on the open market. It can be a housing association, a housing society or a non-profit making housing company. The Housing Corporation, which was set up by Parliament in 1964, funds homes built by registered social landlords from money received from central government.
- 4.2 Capital resources requirements
- General solvency requirement
- 4.2.1 R A *firm* must at all times ensure that it is able to meet its liabilities as they fall due.
- General capital resource requirement
- 4.2.2 R A *firm* must at all times maintain capital resources equal to or in excess of its relevant capital resources requirement.
- Capital resources: relevant accounting principles
- 4.2.3 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a *rule* requires otherwise.
- Capital resources: client assets
- 4.2.4 R In this chapter, "*client assets*" includes a *document* only if it has value, or is capable of having value, in itself (such as a bearer instrument).
- Capital resources requirement: firms carrying on regulated activities including designated investment business
- 4.2.5 R The capital resources requirement for a *firm* (other than a *credit union*) carrying on *regulated activities*, including *designated investment business*, is the higher of:

- (1) the requirement which is applied by this chapter according to the activity or activities of the *firm* (treating the relevant *rules* as applying to the *firm* by disregarding its *designated investment business*); and
- (2) the financial resource requirement which is applied by the Interim Prudential sourcebook for investment businesses or the Prudential sourcebook for Banks, Building Societies and Investment Firms.

Capital resources requirement: credit unions

4.2.6 R The capital resources requirement for a *credit union* to which this chapter applies is the highest of:

- (1) the requirement which is applied to *firms* carrying on mediation activities only (see *MIPRU* 4.2.11R) treating that *rule* as applying to the *credit union* by disregarding activities which are not *insurance mediation activity* or *mortgage mediation activity*;
- (2) the amount which is applied by the Credit Unions sourcebook; and
- (3) if the *credit union* is a *CTF provider* that has a *permission* to carry on *designated investment business*, the amount which is applied by Chapter 8 of the Interim Prudential sourcebook for investment businesses.

Capital resources requirement: social housing firms

4.2.7 R The capital resources requirement for a *social housing firm* whose *Part IV permission* is limited to carrying on the *regulated activities* of:

- (1) *mortgage lender*; or
- (2) *mortgage administration* (or both);

is that the *firm's* net tangible assets must be greater than zero.

4.2.8 G If a *social housing firm* is carrying on *mortgage lending* or *mortgage administration* (and no other *regulated activity*), its net tangible assets must be greater than zero. However, if it carries on *insurance mediation activity* or *mortgage mediation activity*, there is no special provision and the capital resources requirement for *firms* carrying on *designated investment business* or mediation activities only applies to it as appropriate.

Capital resources requirement: application according to regulated activities

4.2.9 R Unless any of the *rules* on capital resources for *firms* carrying on *designated investment business*, for *credit unions* or for *social housing firms* apply, the capital resources requirement for a *firm* varies according to the *regulated activity* or activities it carries on.

4.2.10 R Table: Application of capital resources requirements

	Regulated activities	Provisions
1.	(a) <i>insurance mediation activity</i> ; or  (b) <i>mortgage mediation activity</i> (or both); and no other <i>regulated activity</i> .	MIPRU 4.2.11R
2.	(a) <i>mortgage lending</i> ; or  (b) <i>mortgage lending and mortgage administration</i> ; and no other <i>regulated activity</i> .	MIPRU 4.2.12R to MIPRU 4.2.17E
3.	<i>mortgage administration</i> ; and no other <i>regulated activity</i> .	MIPRU 4.2.18R to MIPRU 4.2.19R
4.	<i>insurance mediation activity</i> ; and  (a) <i>mortgage lending</i> ; or  (b) <i>mortgage administration</i> (or both).	MIPRU 4.2.20R
5.	<i>mortgage mediation activity</i> ; and  (a) <i>mortgage lending</i> , or  (b) <i>mortgage administration</i> (or both).	MIPRU 4.2.21R
6.	Any combination of <i>regulated activities</i> not within rows 1 to 5.	MIPRU 4.2.22R

Capital resources requirement: mediation activity only

- 4.2.11 R
- (1) If a *firm* carrying on *insurance mediation activity* or *mortgage mediation activity* (and no other *regulated activity*) does not hold *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £5,000; and
  - (b) 2.5% of the *annual income* from its *insurance mediation activity* or *mortgage mediation activity* (or both).
- (2) If a *firm* carrying on *insurance mediation activity* or *mortgage mediation activity* (and no other *regulated activity*) holds *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £10,000; and

- (b) 5% of the *annual income* from its *insurance mediation activity* or *mortgage mediation activity* (or both).

Capital resources requirement: mortgage lending and administration (but not mortgage administration only)

- 4.2.12 R (1) The capital resources requirement for a *firm* carrying on *mortgage lending* or *mortgage lending and mortgage administration* (and no other *regulated activity*) is the higher of:
  - (a) £100,000; and
  - (b) 1% of:
    - (i) its total assets plus total undrawn commitments; less:
    - (ii) excluded loans plus intangible assets (see Note 1 in the table in *MIPRU* 4.4.4R).
- (2) Undrawn commitments means the total of those amounts which a borrower has the right to draw down from the *firm* but which have not yet been drawn down, excluding those under an agreement:
  - (a) which has an original maturity of up to one year; or
  - (b) which can be unconditionally cancelled at any time by the lender.
- 4.2.13 G When considering what is an undrawn commitment, the *FSA* takes into account an amount which a borrower has the right to draw down, but which has not yet been drawn down, whether the commitment is revocable or irrevocable, conditional or unconditional.
- 4.2.14 R When calculating total assets, the *firm* may exclude a loan which has been transferred to a third party only if it meets the following conditions:
  - (1) the first condition is that the loan has been transferred in a legally effective manner by:
    - (a) novation; or
    - (b) legal or equitable assignment; or
    - (c) sub-participation; or
    - (d) declaration of trust; and
  - (2) the second condition is that the lender:
    - (a) retains no material economic interest in the loan; and

(b) has no material exposure to losses arising from it.

- 4.2.15 E (1) When seeking to rely on the second condition, a *firm* should ensure that the loan qualifies for the 'linked presentation' accounting treatment under Financial Reporting Standard 5 (Reporting the substance of transactions) issued in April 1994, and amended in December 1994 and September 1998 (if applicable to the *firm*).
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the second condition.

4.2.16 G The requirement that the loan qualifies for the 'linked presentation' accounting treatment under FRS 5 is aimed at those *firms* which report according to FRS 5. Other *firms* which report under other standards, including International Accounting Standards, need not adopt FRS 5 in order to meet the second condition.

- 4.2.17 E (1) When seeking to rely on the second condition, a *firm* should not provide material credit enhancement in respect of the loan unless it deducts the amount of the credit enhancement from its capital resources before meeting its capital resources requirement.
- (2) Credit enhancement includes:
- (a) any holding of subordinated loans or notes in a transferee that is a special purpose vehicle; or
  - (b) over collateralisation by transferring loans to a larger aggregate value than the *securities* to be issued; or
  - (c) any other arrangement with the transferee to cover a part of any subsequent losses arising from the transferred loan.
- (3) Contravention of (1) may be relied upon as tending to establish contravention the second condition.

Capital resources requirement: mortgage administration only

4.2.18 R The capital resources requirement for a *firm* carrying on *mortgage administration* only, which has all or part of the *regulated mortgage contracts* that it administers on its balance sheet, is the amount which is applied to a *firm* carrying on *mortgage lending* or *mortgage lending and mortgage administration* (and no other *regulated activity*) (see MIPRU 4.2.12R).

4.2.19 R The capital resources requirement for a *firm* carrying on *mortgage administration* only, which has all the *regulated mortgage contracts* that it administers off its balance sheet, is the higher of:

- (1) £100,000; and

- (2) 10% of its *annual income*.

Capital resources requirement: insurance mediation activity and mortgage lending or mortgage administration

4.2.20 R The capital resources requirement for a *firm* carrying on *insurance mediation activity* and *mortgage lending* or *mortgage administration* is the sum of the requirements which are applied to the *firm* by:

- (1) the capital resources *rule* for a *firm* carrying on *insurance mediation activity* or *mortgage mediation activity* (and no other *regulated activity*) (see *MIPRU* 4.2.11R); and
- (2) (a) the capital resources *rule* for a *firm* carrying on *mortgage lending* or *mortgage lending* and *mortgage administration* (and no other *regulated activity*) (see *MIPRU* 4.2.12R); or
- (b) if, in addition to its *insurance mediation activity*, the *firm* carries on *mortgage administration* with all the assets that it administers off balance sheet, the capital resources *rule* for such a *firm* (see *MIPRU* 4.2.19R).

Capital resources requirement: mortgage mediation activity and mortgage lending or mortgage administration

4.2.21 R (1) If a *firm* carrying on *mortgage mediation activity* and *mortgage lending* or *mortgage administration* does not hold *client money* or other *client* assets in relation to its *mortgage mediation activity*, the capital requirement is the amount applied to a *firm*, according to the activities carried on by the *firm*, by:

- (a) the capital resources *rule* for a *firm* carrying on *mortgage lending* or *mortgage lending* and *mortgage administration* (and no other *regulated activity*) (see *MIPRU* 4.2.12R); or
- (b) if, in addition to its *mortgage mediation activity*, the *firm* carries on *mortgage administration* with all the assets that it administers off balance sheet, the capital resources *rule* for such a *firm* (see *MIPRU* 4.2.19R).
- (2) If the *firm* holds *client money* or other *client* assets in relation to its *mortgage mediation activity*, the capital resources requirement is:
- (a) the amount calculated under (1); plus
- (b) the amount which is applied to a *firm* carrying on *insurance mediation activity* or *mortgage mediation activity* (and no other *regulated activity*) that holds *client money* or other *client* assets in relation to these activities (see *MIPRU* 4.2.11R(2)).

Capital resources requirement: other combinations of activities

4.2.22 R The capital resources requirement for a *firm* carrying any other combination of *regulated activities* is the amount which is applied to a *firm* carrying on *insurance mediation activity* and *mortgage lending* or *mortgage administration* (see MIPRU 4.2.20R).

4.3 Calculation of annual income

Annual income

4.3.1 R This section contains provisions relating to the calculation of *annual income* for the purposes of:

- (1) the *limits of indemnity* for professional indemnity insurance; and
- (2) the capital resources requirements.

4.3.2 R 'Annual income' is the annual income given in the *firm's* most recent annual financial statement from the relevant *regulated activity* or activities.

4.3.3 R For a *firm* which carries on *insurance mediation activity* or *mortgage mediation activity*, *annual income* is the amount of all brokerage, fees, *commissions* and other related income (for example, administration charges, overrides, profit shares) due to the *firm* in respect of or in relation to those activities.

4.3.4 G (1) The purpose of the *rule* on *annual income* that applies to *insurance intermediaries* and *mortgage intermediaries* 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) *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*.

4.3.5 R If a *firm* is a *principal*, its *annual income* includes amounts due to its *appointed representative* in respect of activities for which the *firm* has accepted responsibility.

4.3.6 G If a *firm* is a *network*, it should include the relevant income due to all of its *appointed representatives* in its *annual income*.

Annual income for mortgage administration

- 4.3.7 R For the purposes of the calculation of the capital resources of a *firm* carrying on *mortgage administration* only with all the assets it administers off balance sheet, *annual income* is the sum of:
- (1) revenue (that is, *commissions*, fees, net interest income, dividends, royalties and rent); and
  - (2) gains;
  - (3) arising in the course of the ordinary activities of the *firm*, less profit:
    - (a) on the sale or termination of an operation;
    - (b) arising from a fundamental reorganisation or restructuring having a material effect on the nature and focus of the *firm's* operation; and
    - (c) on the disposal of fixed assets, including *investments* held in a long-term portfolio.

Annual income: periods of less than 12 months

- 4.3.8 R If the *firm's* most recent annual financial statement does not cover a 12 *month* period, the *annual income* is taken to be the amount in the statement converted, proportionally, to a 12 *month* period.

Annual income: no financial statements

- 4.3.9 R If the *firm* does not have annual financial statements, the *annual income* is to be taken from the forecast or other appropriate accounts which the *firm* has submitted to the *FSA*.

#### 4.4 Calculation of capital resources

The calculation of a firm's capital resources

- 4.4.1 R (1) A *firm* must calculate its capital resources only from the items which are eligible to contribute to a *firm's* capital resources from which it must deduct certain items (see *MIPRU* 4.4.4R).
- (2) If the *firm* is subject to the Interim Prudential sourcebook for investment businesses, the Prudential sourcebook for Banks, Building Societies and Investment Firms or the Credit Unions sourcebook, the capital resources are the higher of:
- (a) the amount calculated under (1); and
  - (b) the financial resources calculated under those sourcebooks.

- 4.4.2 R Table: Items which are eligible to contribute to the capital resources of a firm



	Item	Additional explanation																		
1.	<i>Share</i> capital	<p>This must be fully paid and may include:</p> <table border="1" data-bbox="743 344 1417 568"> <tr> <td data-bbox="743 344 927 418">(1)</td> <td data-bbox="927 344 1417 418">ordinary <i>share</i> capital; or</td> </tr> <tr> <td data-bbox="743 418 927 568">(2)</td> <td data-bbox="927 418 1417 568">preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).</td> </tr> </table>	(1)	ordinary <i>share</i> capital; or	(2)	preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).														
(1)	ordinary <i>share</i> capital; or																			
(2)	preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).																			
2.	Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i> )	<p>The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i>:</p> <table border="1" data-bbox="743 754 1417 2004"> <tr> <td data-bbox="743 754 810 1420">(1)</td> <td data-bbox="810 754 1417 1420"> <p>capital account, that is the account:</p> <table border="1" data-bbox="810 826 1417 1420"> <tr> <td data-bbox="810 826 868 938">(a)</td> <td data-bbox="868 826 1417 938">into which capital contributed by the <i>partners</i> is paid; and</td> </tr> <tr> <td data-bbox="810 938 868 1420">(b)</td> <td data-bbox="868 938 1417 1420"> <p>from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <table border="1" data-bbox="868 1126 1417 1420"> <tr> <td data-bbox="868 1126 1417 1308">(i)</td> <td data-bbox="868 1126 1417 1308">he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i>; or</td> </tr> <tr> <td data-bbox="868 1308 1417 1420">(ii)</td> <td data-bbox="868 1308 1417 1420">the <i>partnership</i> is otherwise dissolved or wound up; and</td> </tr> </table> </td> </tr> </table> </td> </tr> <tr> <td data-bbox="743 1420 810 1532">(2)</td> <td data-bbox="810 1420 1417 1532">current accounts according to the most recent financial statement.</td> </tr> <tr> <td colspan="2" data-bbox="743 1532 1417 1677">For the purpose of the calculation of capital resources, in respect of a <i>defined benefit occupational pension scheme</i>:</td> </tr> <tr> <td data-bbox="743 1677 810 1789">(1)</td> <td data-bbox="810 1677 1417 1789">a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</td> </tr> <tr> <td data-bbox="743 1789 810 2004">(2)</td> <td data-bbox="810 1789 1417 2004">a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</td> </tr> </table>	(1)	<p>capital account, that is the account:</p> <table border="1" data-bbox="810 826 1417 1420"> <tr> <td data-bbox="810 826 868 938">(a)</td> <td data-bbox="868 826 1417 938">into which capital contributed by the <i>partners</i> is paid; and</td> </tr> <tr> <td data-bbox="810 938 868 1420">(b)</td> <td data-bbox="868 938 1417 1420"> <p>from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <table border="1" data-bbox="868 1126 1417 1420"> <tr> <td data-bbox="868 1126 1417 1308">(i)</td> <td data-bbox="868 1126 1417 1308">he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i>; or</td> </tr> <tr> <td data-bbox="868 1308 1417 1420">(ii)</td> <td data-bbox="868 1308 1417 1420">the <i>partnership</i> is otherwise dissolved or wound up; and</td> </tr> </table> </td> </tr> </table>	(a)	into which capital contributed by the <i>partners</i> is paid; and	(b)	<p>from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <table border="1" data-bbox="868 1126 1417 1420"> <tr> <td data-bbox="868 1126 1417 1308">(i)</td> <td data-bbox="868 1126 1417 1308">he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i>; or</td> </tr> <tr> <td data-bbox="868 1308 1417 1420">(ii)</td> <td data-bbox="868 1308 1417 1420">the <i>partnership</i> is otherwise dissolved or wound up; and</td> </tr> </table>	(i)	he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i> ; or	(ii)	the <i>partnership</i> is otherwise dissolved or wound up; and	(2)	current accounts according to the most recent financial statement.	For the purpose of the calculation of capital resources, in respect of a <i>defined benefit occupational pension scheme</i> :		(1)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;	(2)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
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3.	Reserves (Note 1)	<p>These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p>
<p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p>		
(1)	<p>a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held in the available-for-sale financial assets category;</p>	
(2)	<p>a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</p>	
(3)	<p>in respect of a <i>defined benefit occupational pension scheme</i>:</p>	
(a)	<p>a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p>	
(b)	<p>a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>	
4.	Interim net profits (Note 1)	<p>If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.</p>
5.	Revaluation reserves	
6.	General/collective provisions (Note 1)	<p>These are provisions that a <i>firm</i> carrying on <i>mortgage lending</i> or <i>mortgage administration</i> holds against potential losses that have not yet been identified but which experience indicates are</p>

		present in the <i>firm's</i> portfolio of assets. Such provisions must be freely available to meet these unidentified losses wherever they arise. Subject to Note 1, general/collective provisions must be verified by external auditors and disclosed in the <i>firm's</i> annual report and accounts.
7.	Subordinated loans	Subordinated loans must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans.
Note:		
1	Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)).	

4.4.3 G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

4.4.4 R Table: Items which must be deducted from capital resources

1	<i>Investments</i> in own <i>shares</i>
2	Intangible assets (Note 1)
3	Interim net losses (Note 2)
4	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 2)
<p><b>Notes</b></p> <p>1. Intangible assets are the full balance sheet value of goodwill (but not until 14 January 2008 - see transitional provision 1), capitalised development costs, brand names, trademarks and similar rights and licences.</p> <p>2. The interim net losses in row 3, and the excess of drawings in row 4, are in relation to the period following the date as at which the capital resources are being computed.</p>	

Personal assets

4.4.5 R In relation to a *sole trader's firm* or a *firm* which is a *partnership*, the *sole trader* or a *partner* in the *firm* may use personal assets to meet the general

solvency requirement and the general capital resource requirement, to the extent necessary to make up any shortfall in meeting those requirements, unless:

- (1) those assets are needed to meet other liabilities arising from:
  - (a) personal activities; or
  - (b) another business activity not regulated by the *FSA*; or
- (2) the *firm* holds *client money* or other *client* assets.

4.4.6 G A *sole trader* or a *partner* may use any personal assets, including property, to meet the capital requirements of this chapter, but only to the extent necessary to make up a shortfall.

Subordinated loans

4.4.7 R A subordinated debt must not form part of the capital resources of the *firm* unless it meets the following conditions:

- (1) (for a *firm* which carries on *insurance mediation activity* or *mortgage mediation activity* (or both) but not *mortgage lending* or *mortgage administration*) it has an original maturity of:
  - (a) at least two years; or
  - (b) it is subject to two years' notice of repayment;
- (2) (for all other *firms*) it has an original maturity of:
  - (a) at least five years; or
  - (b) it is subject to five years' notice of repayment;
- (3) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (4) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (5) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (6) the subordinated debt must not become due and payable before its stated final maturity date except on an event of default complying with (4);
- (7) the agreement and the debt are governed by the law of England and

Wales, or of Scotland or of Northern Ireland;

- (8) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (9) the terms of the subordinated debt must be set out in a written agreement or instrument that contains terms that provide for the conditions set out in this *rule*; and
- (10) the debt must be unsecured and fully paid up.

4.4.8 R (1) This *rule* applies to a *firm* which:

- (a) carries on:
  - (i) *insurance mediation activity*; or
  - (ii) *mortgage mediation activity* (or both); and
- (b) in relation to those activities, holds *client money* or other *client assets*;

but is not carrying on *mortgage lending* or *mortgage administration*.

- (2) In calculating its capital resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans and its redeemable preference *shares* exceeds the amount calculated as follows:

four times (a - b - c);		
where:		
a	=	items 1 to 5 in the Table of items which are eligible to contribute to a <i>firm's</i> capital resources (see <i>MIPRU</i> 4.4.2R)
b	=	the <i>firm's</i> redeemable preference <i>shares</i> ; and
c	=	the amount of its intangible assets (but not goodwill until 14 January 2008 - see transitional provision 1).

4.4.9 G If a *firm* wishes to see an example of a subordinated loan agreement which would meet the required conditions, it should refer to the FSA website.

5 Insurance undertakings and mortgage lenders using insurance or mortgage mediation services

5.1 Application and purpose

Application

5.1.1 R This chapter applies to a *firm* with a *Part IV permission* to carry on:

(1) *insurance business*; or

(2) *mortgage lending*;

(3) and which uses, or proposes to use, the services of another person consisting of:

(a) *insurance mediation*; or

(b) *insurance mediation activity*; or

(c) *mortgage mediation activity*.

Purpose

5.1.2 G The purpose of this chapter is to implement article 3.6 of the *Insurance Mediation Directive* in relation to *insurance undertakings*. The provisions of this chapter have been extended to *mortgage lenders* in relation to *insurance mediation activity*, and to *insurance undertakings* and *mortgage lenders* in relation to *mortgage mediation activity*, to ensure that *firms* using these services are treated in the same way and to ensure that *clients* have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an *unauthorised person*, this chapter also ensures that each person in the chain of those providing services is authorised.

5.1.3 G This chapter supports the more general duties in *Principles 2* and *3*, and the relevant *rule* in the Senior Management Arrangements, Systems and Controls sourcebook (see *SYSC 3.1.1R*).

5.2 Use of intermediaries

5.2.1 R A *firm* must not use, or propose to use, the services of another person consisting of:

(1) *insurance mediation*; or

(2) *insurance mediation activity*; or

(3) *mortgage mediation activity*;

unless two conditions are satisfied.

[Note: Article 3(6) of the *IMD*]

- 5.2.2 R The first condition is that the person, in relation to the activity:
- (1) has *permission*; or
  - (2) is an *exempt person*; or
  - (3) is an *exempt professional firm*; or
  - (4) is registered in another *EEA State* for the purposes of the *IMD*; or
  - (5) in relation to *insurance mediation activity*, is not carrying this activity on in the *EEA*; or
  - (6) in relation to *mortgage mediation activity*, is not carrying this activity on in the *United Kingdom*.

[Note: Article 3(6) of the *IMD*]

- 5.2.3 E (1) A *firm* should:
- (a) before using the services of the intermediary, check:
    - (i) the *FSA Register*; or
    - (ii) in relation to *insurance mediation* carried on by an *EEA firm*, the register of its *Home State regulator*;for the status of the person; and
  - (b) use the services of that person only if the relevant register indicates that the person is registered for that purpose.
- (2) (a) Checking the *FSA Register* before using the services of the intermediary and using the services of that person only if the *FSA Register* indicates that the person is registered for that purpose may be relied on as tending to establish that:
- (i) the person, in relation to the activity, has *permission*; or
  - (ii) the person, in relation to *insurance mediation activity*, also is an *exempt person* or an *authorised professional firm*.
- (b) In relation to *insurance mediation* carried on by an *EEA firm*, checking the register of the *firm's Home State regulator* and using the services of the *EEA firm* only if the register indicates that the *firm* is registered for that purpose may be relied on as tending to establish that the *firm* is registered for

the purposes of the *IMD*.

- 5.2.4 R The second condition is that the *firm* takes all reasonable steps to ensure that the person that it uses in relation to the activity, is not, directly or indirectly, carrying out the activity as a consequence of the activities of another person which:
- (1) contravene section 19 of the *Act* (The general prohibition); or
  - (2) in the case of activities provided from an establishment in an *EEA State*, contravene the *IMD* registration requirements.
- [**Note:** Article 3(6) of the *IMD*]
- 5.2.5 R In order to comply with the second condition, a *firm* may rely on a confirmation provided by the other person in writing if:
- (1) the confirmation is provided by a person that satisfies the first condition;
  - (2) the *firm* checked that this is the case; and
  - (3) the *firm* is not aware that the confirmation is inaccurate and has no grounds for reasonably being aware that the confirmation is inaccurate.
- 5.2.6 G The *FSA Register* can be accessed through the *FSA* website under the link [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).



## Annex B

### MIPRU Transitional Provisions

#### MIPRU TP Transitional Provisions

#### MIPRU TP 1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<b>1</b>	<i>MIPRU</i> 4.4.4R and <i>MIPRU</i> 4.4.8R(3)	R	<i>A firm</i> is not required to include goodwill in its intangible assets until 14 January 2008.	From 31 October 2004 until 14 January 2008	31 October 2004
<b>2</b>	<i>MIPRU</i> 5.2.2R and <i>MIPRU</i> 5.2.4R	R	<i>MIPRU</i> 5.2.2R and <i>MIPRU</i> 5.2.4R have effect in respect of the use by a <i>firm</i> of the services of another <i>person</i> consisting of <i>insurance mediation</i> and provided from an establishment in an <i>EEA State</i> that has not implemented Article 3 (Registration) of the <i>IMD</i> , as if the condition in paragraph (4) of <i>MIPRU</i> 5.2.2R and the condition in paragraph (2) of <i>MIPRU</i> 5.2.4R were a condition that the <i>firm</i> has no reason to doubt the good repute, competence and financial standing of that <i>person</i> .	from 14 January 2005 until the implementation of Article 3 of the <i>IMD</i> by the relevant <i>EEA State</i>	14 January 2005

## **Annex C**

### **Schedules to MIPRU**

Insert, after MIPRU Chapter 5, the following schedules. In this annex, all text is new and is not underlined.

#### **MIPRU**

##### **Schedule 1**

##### **Record keeping requirements**

###### **G**

- 1.1 There are no record keeping requirements in *MIPRU*.

**MIPRU**  
**Schedule 2**  
**Notification requirements**

G

2.1 There are no notification requirements in *MIPRU*.

**MIPRU**  
**Schedule 3**  
**Fees and other required payments**

G

3.1 There are no requirements for fees or other payments in *MIPRU*.

**MIPRU**  
**Schedule 4**  
**Powers exercised**

G

4.1

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>MIPRU</i> :	
(1)	Section 138 (General rule-making power);
(2)	Section 149 (Evidential provisions); and
(3)	Section 156 (General supplementary powers).

4.2

The following powers in the <i>Act</i> have been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>MIPRU</i> :	
(1)	Section 157(1) (Guidance).

**MIPRU**  
**Schedule 5**  
**Rights of actions for damages**

G

1. The table below sets out the *rules* in *MIPRU* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a person who suffers loss as a result of the contravention.
2. If a ‘Yes’ appears in the column headed ‘For private person’, the *rule* may be actionable by a ‘private person’ under section 150 of the *Act* (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A ‘Yes’ in the column headed ‘Removed’ indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed ‘For other person’ indicates whether the *rule* may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the *rule* may be actionable is given.

Table

Chapter/ Appendix	Section / Annex	Right of action under section 150		
		For private person	Removed	For other person
All <i>rules</i> in <i>MIPRU</i> with the status letter “E”		No	No	No
All other <i>rules</i> in <i>MIPRU</i>		No	Yes, <i>MIPRU</i> 1.2.1R	No

**MIPRU**  
**Schedule 6**  
**Rules that can be waived**

**G**

1. The *rules* in *MIPRU* may be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules). However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives. It therefore follows that if a *rule* in *MIPRU* contains provisions which derive partly from a directive, and partly not, the *FSA* will be able to consider a *waiver* of the latter requirements only, unless the directive provisions are optional rather than mandatory.

## Annex D

### Amendments to the Glossary of Definitions

Insert the following new definitions in the appropriate alphabetical position:

*annual income*

(in *MIPRU*)

the income referred to in *MIPRU* 4.3.



## Annex E

### General amendments to the Handbook consequential on the creation of *MIPRU*

References in the *Handbook* (other than those specifically mentioned in the CRD (Consequential Amendments) Instrument 2006) to provisions in column (1) of the tables 1 and 2 are replaced with references to the corresponding provisions in column (2) of those tables.

**Table 1**

Provision in PRU 9	Corresponding provision in MIPRU
9.1.1R	2.1.1R
9.1.2G	2.1.2G
9.1.3R	2.2.1R
9.1.4R	2.2.2R
9.1.5G	2.2.3G
9.1.6G	2.2.4G
9.1.7G	2.2.5G
9.1.8R	2.3.1R
9.1.9G	2.3.2G
9.1.10R	2.3.3R
9.1.11G	2.3.4G
9.1.12G	2.3.5G
9.2.1R	3.1.1R
9.2.2G	3.1.2G
9.2.3G	3.1.3G
9.2.4G	3.1.4G
9.2.5G	3.1.5G
9.2.6G	3.1.6G
9.2.7R	3.2.1R
9.2.8G	3.2.2G
9.2.9G	3.2.3G
9.2.10R	3.2.4R
9.2.11G	3.2.5G
9.2.12G	3.2.6G

9.2.13R	3.2.7R
9.2.14R	3.2.8R
9.2.15R	3.2.9R
9.2.16R	3.2.10R
9.2.17R	3.2.11R
9.2.18R	3.2.12R
9.2.19R	3.2.13R
9.2.20R	3.2.14R
9.2.23G	3.2.15G
9.3.1R	4.1.1R
9.3.2G	4.1.2G
9.3.3G	4.1.3G
9.3.4R	4.1.4R
9.3.5G	4.1.5G
9.3.6R	4.1.6R
9.3.7G	4.1.7G
9.3.8R	4.1.8R
9.3.9G	4.1.9G
9.3.10R	4.1.10R
9.3.11R	4.1.11R
9.3.12G	4.1.12G
9.3.13G	4.1.13G
9.3.14G	4.1.14G
9.3.15G	4.1.15G
9.3.16G	4.1.16G
9.3.17G	4.1.17G
9.3.18G	4.1.18G
9.3.19G	4.1.19G
9.3.20R	4.2.1R
9.3.21R	4.2.2R
9.3.22R	4.2.3R
9.3.23R	4.2.4R
9.3.24R	4.2.5R

9.3.25R	4.2.6R
9.3.26R	4.2.7R
9.3.27G	4.2.8G
9.3.28R	4.2.9R
9.3.29R	4.2.10R
9.3.30R	4.2.11R
9.3.31R	4.2.12R
9.3.32G	4.2.13G
9.3.33R	4.2.14R
9.3.34E	4.2.15E
9.3.35G	4.2.16G
9.3.36E	4.2.17E
9.3.37R	4.2.18R
9.3.38R	4.2.19R
9.3.39R	4.2.20R
9.3.40R	4.2.21R
9.3.41R	4.2.22R
9.3.42R	4.3.1R
9.3.43R	4.3.2R
9.3.44R	4.3.3R
9.3.45G	4.3.4G
9.3.46R	4.3.5R
9.3.47G	4.3.6G
9.3.48R	4.3.7R
9.3.49R	4.3.8R
9.3.50R	4.3.9R
9.3.51R	4.4.1R
9.3.52R	4.4.2R
9.3.52AG	4.4.3G
9.3.53R	4.4.4R
9.3.54R	4.4.5R
9.3.55G	4.4.6G
9.3.56R	4.4.7R

9.3.57R	4.4.8R
9.3.58G	4.4.9G
9.4.1R	5.1.1R
9.4.2G	5.1.2G
9.4.3G	5.1.3G
9.4.4R	5.2.1R
9.4.5R	5.2.2R
9.4.6E	5.2.3E
9.4.7R	5.2.4R
9.4.8R	5.2.5R
9.4.9G	5.2.6G

**Table 2**

<b>Reference in PRU 9</b>	<b>Corresponding reference in MIPRU</b>
<i>PRU 9</i>	<i>MIPRU</i>
<i>PRU 9.1</i>	<i>MIPRU 2</i>
<i>PRU 9.2</i>	<i>MIPRU 3</i>
<i>PRU 9.3</i>	<i>MIPRU 4</i>
<i>PRU 9.4</i>	<i>MIPRU 5</i>
<i>PRU 9.1</i> (Responsibility for insurance mediation activity)	<i>MIPRU 2</i> (Insurance mediation activity: responsibility, knowledge, ability and good repute)
<i>PRU 9.2</i> (Professional indemnity insurance requirements for insurance and mortgage mediation activities)	<i>MIPRU 3</i> (Professional indemnity insurance)
<i>PRU 9.3</i> (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration)	<i>MIPRU 4</i> (Capital resources)
<i>PRU 9.4</i> (Insurance undertakings and mortgage lenders using insurance and mortgage mediation services)	<i>MIPRU 5</i> (Insurance undertakings and mortgage lenders using insurance and mortgage mediation services)