

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:

Annex A	31 October 2004 (in part) and 14 January 2005 (in part) (see note)
Annex B	14 January 2005
Annex C	31 October 2004 (in part) and 14 January 2005 (in part) (see note)
Annex D	31 October 2004 (in part) and 14 January 2005 (in part) (see note)
Annex E	14 January 2005
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

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

...

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 will usually be excluded, unless~~ However, such loans will not be excluded if:

- (1) the lessee is a 'related person' to the borrower. This will be the case ~~e~~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~~ into regulated mortgage contracts ~~regulated mortgage contracts or vary the terms of~~ 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:
- (1a) 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.

Type of insurance contract	Regulated activities an appointed representative can carry on
<i>General insurance contract</i>	<ul style="list-style-type: none"> • <i>Dealing in investments as agent;</i> • <i>Arranging;</i> • <i>Assisting in the administration and performance of a contract of insurance;</i> • <i>Advising on investments; and</i> • <i>Agreeing to carry on these regulated activities.</i>
<i>Pure protection contract</i>	<ul style="list-style-type: none"> • <u><i>Dealing in investments as agent (but only where the contract is not a long-term care insurance contract);</i></u> • <i>Arranging;</i> • <u><i>Assisting in the administration and performance of a contract of insurance;</i></u> • <i>Advising on investments; and</i> • <i>Agreeing to carry on these regulated activities.</i>
<i>Life policy (note that this already has effect prior to 14 January 2005)</i>	<ul style="list-style-type: none"> • <i>Arranging;</i> • <u><i>Assisting in the administration and performance of a contract of insurance;</i></u> • <i>Advising on investments; and</i> • <i>Agreeing to carry on these regulated activities.</i>

...

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.

(This Annex amends in part the text made in the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (2004/01) and Annex D of the Appointed Representatives Instrument 2004 (2004/09).)

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

...

...

12.5.2 G ...

(2) 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;~~

...

...

12.7.7 R (1)

If:

(a) (i) the scope of appointment of the *appointed representative* is extended to cover *insurance mediation activities* for the first time; and

~~(b)~~ (ii) the *appointed representative* is not included on the *Register* as carrying on *insurance mediation activities* in another capacity; ~~and~~ or

~~(c)~~ (b) 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 *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*

9.2.13R and the *limits of indemnity* as set out in *PRU 9.2.15R*. 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 9.2.1R(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 9.2.10R(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 9.2.10R(2)* is the higher of 10% of annual income (see *PRU 9.3.42R*) up to £1 million, and:

(1) ...

...

- 9.3.45 G
- (1) The purpose of *PRU 9.3.44R* 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 9.3.43R* and *PRU 9.3.44R*, 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, ~~t~~ 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*.