

**PRA RULEBOOK: GENERAL PROVISIONS INSTRUMENT 2015**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 137G (the PRA’s general rules); and
  - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: General Provisions Instrument 2015**

- D. The PRA makes the rules in the Annex to this instrument.

**Commencement**

- E. This instrument comes into force on 2 April 2015.

**Citation**

- F. This instrument may be cited as the PRA Rulebook: General Provisions Instrument 2015.

**By order of the Board of the Prudential Regulation Authority**

30 March 2015

**Annex**

In this Annex, the text is all new and is not underlined.

**Part**

# **GENERAL PROVISIONS**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. EMERGENCY**
- 3. DISCLOSURE TO RETAIL CLIENTS**
- 4. REFERRING TO APPROVAL BY THE PRA**
- 5. STATEMENTS ABOUT AUTHORISATION AND REGULATION BY THE PRA**
- 6. DISCLOSURE TO RETAIL CLIENTS ON ACTIVITIES FROM NON-UK ESTABLISHMENTS**
- 7. INSURANCE AGAINST FINANCIAL PENALTIES**

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless stated otherwise, this Part applies to every *firm*.

1.2 In this Part, the following definitions shall apply:

*consumer*

has the meaning given in the *FCA Handbook* for the purposes of the *FCA*'s rule in *GEN 4.4.1(1)(a)(i)*.

*customer*

has the meaning given in the *FCA Handbook* for the purposes of the *FCA*'s rules in *GEN 4.4.1R(1)(a)(ii)* and *GEN 4.5.1R(1)*.

*eligible counterparty*

has the meaning given in the *FCA Handbook* for the purposes other than for the purposes of the part of the *FCA Handbook* in High Level Standards that has the title Principles for Businesses.

*equivalent business of a third country investment firm*

the business of a *third country investment firm* carried on from an establishment in the *UK* that would be *MiFID business* if that *firm* were a *MiFID investment firm*.

*financial penalty*

means a financial penalty that the *PRA* has imposed, or may impose, under *FSMA*. It does not include a financial penalty imposed by any other body.

*GEN*

means the part of the *FCA Handbook* in High Level Standards which has the title General Provisions.

*habitual residence*

- (1) if the *policyholder* is an individual, the address given by the *policyholder* as his residence if it reasonably appears to be a residential address and there is no evidence to the contrary; or
- (2) if the *policyholder* is not an individual or a *group* of individuals, the State in which the *policyholder* has its place of establishment, or, if it has more than one, its relevant place of establishment.

*home finance transaction*

has the meaning given in the *FCA Handbook*.

*incoming ECA provider*

has the meaning given in the *FCA Handbook*.

*MiFID or equivalent third country business*

*MiFID business* or the *equivalent business of a third country investment firm*.

*MTF*

has the meaning given in the *FCA Handbook*.

*non-investment insurance contract*

has the meaning given in the *FCA Handbook*.

*professional client*

has the meaning given in the *FCA Handbook*.

*regulated market*

has the meaning given in the *FCA Handbook*.

*retail client*

means a *client* who is neither a *professional client* or an *eligible counterparty*.

*State of the risk*

means references to the *EEA State* in which a risk is situated in accordance with paragraphs 6(3) and 6(4) of Schedule 12 to *FSMA*.

*UK domestic firm*

means a *firm* that has its registered office (or, if it has no registered office, its head office) in the *UK*.

## **2 EMERGENCY**

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2.1 This Chapter applies to every *person* to whom a *PRA* rule applies.

2.2 (1) If any emergency arises which:

- (a) makes it impracticable for a *person* to comply with a particular *PRA* rule;
- (b) could not have been avoided by the *person* taking all reasonable steps; and
- (c) is outside the control of the *person*, its *associates* and agents (and of its and their *employees*),

the *person* will not be in contravention of that rule to the extent that, in consequence of the emergency, compliance with that rule is impracticable.

(2) (1) applies only for so long as:

- (a) the consequences of the emergency continue; and
- (b) the *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the rule, and to mitigate losses and potential losses to its *clients* (if any).

- (3) The *person* must notify the *PRA* as soon as practicable of the emergency and of the steps the *person* is taking and proposes to take to deal with the consequences of the emergency.

### 3 DISCLOSURE TO RETAIL CLIENTS

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#### 3.1 This Chapter:

- (1) subject to (2), applies to:
- (a) every *firm* and with respect to every *regulated activity*;
  - (b) activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *UK*;
  - (c) letters delivered by hand, sent by post and sent by fax and also electronic mail;
  - (d) letters sent by any of the *firm's employees*, which includes its *appointed representatives* and their *employees*.
- (2) does not apply to:
- (a) an *incoming ECA provider* when the *firm* is acting as such;
  - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *UK*;
  - (c) an *incoming firm* not falling under (a) or (b), to the extent that the *firm* is subject to equivalent rules imposed by its *home Member State*;
  - (d) *MiFID* or *equivalent third country business*;
  - (e) *general insurance business* if:
    - (i) the *State of the risk* is an *EEA State* other than the *UK*; or
    - (ii) the *State of the risk* is outside the *EEA* and the *policyholder* is not in the *UK* when the *contract of insurance* is entered into;
  - (f) *long-term insurance business* if:
    - (i) the *policyholder's habitual residence* is in an *EEA State* other than the *UK*; or
    - (ii) the *policyholder's habitual residence* is outside the *EEA* and is not present in the *UK* when the *contract of insurance* is entered into; or
  - (g) text messages, account statements, business cards or compliment slips (used as such).

- 3.2 A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the following disclosure:

- (1) for a *UK domestic firm*, "Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority";
- (2) for an *overseas firm* (which is not an *incoming firm*), "[Authorised and regulated by [name of the overseas regulator of the *overseas firm* in the jurisdiction of that *overseas firm's* registered office (or, if it has no registered office, its head office)]]. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request."
  - (a) If the *overseas firm* (which is not an *incoming firm*) translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear;
  - (b) An *overseas firm* (which is not an *incoming firm*) is not required to disclose its applicable authorisation or regulation by the overseas regulator if it is not so authorised or regulated.
- (3) for an *incoming firm* without a *top-up permission* either:
  - (a) "Authorised by [name of *home Member State* regulator]"; or
  - (b) "Authorised by [name of *home Member State* regulator] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request".

If the *incoming firm* without a *top-up permission*:

  - (c) translates the name of the *home Member State* regulator into English it must ensure that the State in which the regulator is based is clear;
  - (d) indicates or implies to a *customer* that is regulated by the *PRA* or the *FCA*, it must make the disclosure in (b).
- (4) for an *incoming firm* with a *top-up permission*, "Authorised by [name of *home Member State* regulator] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request";
 

If the *incoming firm* with a *top-up permission* translates the name of the *home Member State* regulator into English it must ensure that the State in which the regulator is based is clear.
- (5) for an *appointed representative* of a *firm*, "[Name of *appointed representative*] is an *appointed representative* of [name of *firm*] which is [then continue with the required disclosure of the *firm*]".

If the *appointed representative* has more than one principal, the disclosure must relate to the principal or principals responsible for the *regulated activity* or *regulated activities* concerned. The required disclosure of the *firm* is that which would apply were the *firm* to make the disclosure under the rules applicable to the *firm*.

(6) for the *Society*, "Authorised under the Financial Services and Markets Act 2000".

3.3 If a *firm* offers to make details about the extent of its authorisation by the *PRA* or regulation by the *FCA* or *PRA* available on request and a customer requests such details, it must provide those details in a way that is clear, fair and not misleading.

3.4 Any *person* to which this Chapter applies is permitted to add words to the relevant required disclosure statement but only if the *person* has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

#### 4 REFERRING TO APPROVAL BY THE PRA

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4.1 This Chapter applies to every *firm* and with respect to the carrying on of both *regulated activities* and activities that are not *regulated activities*.

4.2 (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims in any way that any aspect of its affairs have the approval or endorsement of the *PRA* or another competent authority.

(2) (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:

- (a) the *firm* is an *authorised person*;
- (b) the *firm* has *permission* to carry on a specific activity;
- (c) the *firm's approved persons* have been approved by the *PRA* for the purposes of section 59 of *FSMA* (Approval for particular arrangements); or
- (d) the *firm* has been given express written approval by the *PRA* in respect of a specific aspect of the *firm's* affairs.

#### 5 STATEMENTS ABOUT AUTHORISATION AND REGULATION BY THE PRA

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5.1 This Chapter:

(1) subject to (2), applies to:

- (a) every *firm* and with respect to every *regulated activity*;
- (b) activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *UK*, provided that, in the case of the *MiFID business* of an *incoming EEA firm*, it only applies to business conducted within the territory of the *UK*;
- (c) communicating with a *customer*.

(2) does not apply to:

- (a) an *incoming ECA provider* when the *firm* is acting as such;
- (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *UK*;

- (c) an *incoming firm* not falling under (a) or (b), to the extent that the *firm* is subject to equivalent rules imposed by its *home Member State*;
- (d) *MiFID* or equivalent *third country business* that is a transaction:
  - (i) between an *MTF* operator and a member of participant in relation to the use of the *MTF*;
  - (ii) concluded under the rules governing an *MTF* between members or participants of the *MTF*, unless the member or participant is, acting on its *client's* behalf, executing the *client's* orders on an *MTF*; or
  - (iii) concluded on a regulated market by members or participants of the *regulated market*, unless the member or participant is, acting on its *client's* behalf, executing the *client's* orders on a *regulated market*.

5.2 A *firm* must not indicate or imply that it is authorised by the *PRA* in respect of business for which it is not so authorised.

5.3 A *firm* must not indicate or imply that it is regulated or otherwise supervised by the *PRA* in respect of business for which it is not regulated by the *PRA*.

## 6 DISCLOSURE TO RETAIL CLIENTS ON ACTIVITIES FROM NON-UK ESTABLISHMENTS

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6.1 This Chapter:

- (1) subject to (2), applies to every *firm* and with respect to every *regulated activity*, in any communication:
  - (a) made to:
    - (i) (in relation to a *non-investment insurance contract*) a *consumer*;
    - (ii) (in relation to a *home finance transaction*) a *customer*; or
    - (iii) (in all other cases) a *retail client*; and
  - (b) in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *UK*;
- (2) does not apply to:
  - (a) an *incoming ECA provider* when the *firm* is acting as such;
  - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *UK*;
  - (c) an *incoming firm* not falling under (a) or (b), to the extent that the *firm* is subject to equivalent rules imposed by its *home Member State*;
  - (d) *MiFID* or equivalent *third country business*.

6.2 If the *firm* indicates that it is a *PRA-authorised person* it must also, where relevant, and with equal prominence, indicate in writing that in some or all respects the *regulatory system* applying will be different from that of the *UK*. The *firm* may also indicate the protections and

complaints or compensation arrangements available under another relevant system of regulation.

- 6.3 A *firm* need not provide the information required by 6.2 if it has already provided it in writing to the *customer* to whom the communication is made.

## **7 INSURANCE AGAINST FINANCIAL PENALTIES**

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- 7.1 This Chapter applies to every *firm*, but only with respect to business that can be regulated under section 137G of *FSMA*.
- 7.2 No *firm* may pay a *financial penalty* imposed on a present or former *employee*, *director* or *partner* of the *firm* or of an *affiliated company*.
- 7.3 No *firm* may enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a *financial penalty*.
- 7.4 The *Society* and *managing agents* must not cause or permit any *member*, in the conduct of that *member's insurance business* at the *Society*, to enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a *financial penalty*.

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## GENERAL PROVISIONS

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Externally defined glossary terms

<b>Term</b>	<b>Definition source</b>
<i>authorised person</i>	<i>s417(1) FSMA</i>
<i>home Member State</i>	<i>Article 4(1)(43) CRR</i>
<i>person</i>	<i>Schedule 1 Interpretation Act 1978</i>
<i>PRA-authorised person</i>	<i>s2B(5) FSMA</i>
<i>regulated activity</i>	<i>s22 FSMA</i>