

Technical factsheet

Exempt regulated activities registration

The Financial Services and Markets Act 2000 (FSMA) places restrictions on who may carry out certain types of financial services, or 'related activities', in the UK. Subsequently, the Financial Services Act 2012 came into force on 1 April 2013, bringing in new overall regulatory bodies. Many of these services can only be performed by companies or individuals who are authorised by an appropriate regulator. That regulator will either be the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA). Certain professional firms are allowed to carry out certain activities under the supervision and regulation of a designated professional body (DPB).

ACCA accountancy firms in the UK can carry out a limited range of regulated activities, known as exempt regulated activities, if they are registered through ACCA to carry out such activities and meet the eligibility criteria as specified in ACCA's Designated Professional Body Regulations 2001.

This short guide covers the following areas:

- Investment business
- Corporate finance
- Mortgages
- Long-term care insurance
- Insurance distribution activities (including fee protection)
- General advice
- Communications with clients

This guide is in a question-and-answer format, and is based on ACCA's interpretation of the legislation and guidance issued by the FCA. The questions and answers assume that any member reading this holds an ACCA practising certificate. Some of the information given is taken from the Chartered Certified Accountants' Designated Professional Body Regulations 2001 (amended 1 July 2018 to include the Insurance Distribution Directive, which applies from 1 October 2018), which are part of the *ACCA Rulebook*. We recommend that members review the rules in full before undertaking exempt regulated activities. These can be viewed online at <http://rulebook.accaglobal.com>.

INVESTMENT BUSINESS

1. Why can't accountants and accountancy firms give specific investment business advice to clients?

The general prohibition in Section 19 FSMA provides that: 'no person may carry on, or purport to carry on a regulated activity in the United Kingdom unless they are: 'Authorised under Part Four of the Act (an 'authorised person'); or exempt from the Act's provisions (an 'exempt person').'

A breach of this section has a range of consequences and in particular it is punishable on summary conviction with a maximum of six months imprisonment, a fine, or both, and on indictment, with a maximum of two years' imprisonment, an unlimited fine, or both.

2. The previous answer refers to 'regulated activities'. What are these?

'Regulated activities' is a phrase that is defined in the act in section 22, which says that:

'An activity is a regulated activity for the purposes of this act if it is an activity of a specified kind which is carried on by way of business and relates to an investment of a specified kind...'

This isn't the most helpful definition but it does imply that there are three components for a 'regulated activity':

- a specified activity
- carried on by way of business, and
- a specified investment.

3. What are the 'specified activities'?

The specified activities and specified investments are defined in Schedule 2 of FSMA and in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO). The main activities relevant to an accountant are:

Dealing in Investments as Principal (Article 14) or Agent (Article 21)

Arranging Deals in Investments (Article 25)

Deposit Taking (Article 5)

Safeguarding and Administering (Article 40)

Managing (Article 37)

Advising (Article 53)

Administering a Regulated Mortgage Contract (Article 61)

Assisting in the Administration and Performance of a Contract of Insurance (Article 39A)

4. What are the 'specified investments'?

The specified investments are defined in the RAO and the key ones include:

- shares in a company
- instruments creating or acknowledging indebtedness (eg debentures, debenture)
- stock, loan stock, bonds and so on)
- government and public securities (including UK government gilts)
- certain instruments giving entitlement to an investment (eg warrants)
- regulated collective investment schemes (eg unit trusts, investment companies,
- open-ended investment companies)
- various derivatives including options, futures and contracts for difference (CFDs)
- rights under a contract of insurance, including life assurance policies and 'general insurance' policies such as defective title, buildings and contents insurance
- Lloyd's syndicate capacity and syndicate membership
- deposits (which would include money in a bank account)
- rights under a regulated mortgage contract (RMC), home reversion plan, home purchase plan or sale and rent-back mortgages
- rights under a stakeholder or personal pension scheme (but not employer/occupational pensions)
- ISAs, if the vehicle contains one of these investments.

Products of the National Savings and Investment Bank, such as Premium Bonds and National Savings Certificates, are not specified investments. Other common investments such as land, wine, stamps, art and vintage cars are also not specified investments for the purposes of the act.

5. How does the DPB regime fit in?

Professional firms that meet the criteria in Part XX (s.327) of FSMA 2000 can be treated as 'exempt from the general prohibition'. The exemption allows firms to carry out 'exempt regulated activities' under the supervision and regulation of a 'designated professional body' (DPB). Exempt regulated activities are defined in the act as:

'...regulated activities which may, as a result of [the Act] be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition'.

The DPB for ACCA members is ACCA and this exemption is often referred to as the 'DPB regime'. The main criteria that firms must meet in order to rely on the exemption are set out in s.327 and can be summarised as follows:

The manner of the activity must be incidental to the provision of the professional service (s. 327 (4)).

Incidental activities are defined in ACCA's *Rulebook*:

- (a) *In order for a firm to qualify as carrying on regulated activities in an incidental manner:*
- (i) *the main activity of the firm must be the provision of public practice accountancy services other than regulated activities;*
 - (ii) *the carrying on of the regulated activities must not be isolated from other activities of the firm, and the firm must not hold out that the exempt regulated activities are carried out on a standalone basis separate from the main activity of the firm;*
 - (iii) *the firm must not carry on, or hold itself out as carrying on, a regulated activity other than one which is allowed by these rules or one in relation to which the firm is an exempt person;*
 - (iv) *regulated activities should arise out of or be complementary to the provision by the firm of a particular professional service to a particular client*
 - (v) *a firm regulated by the Association for investment business activities should disclose to an existing client or a potential client that the firm is an accountancy firm which may only carry on a limited range of investment business activities; and*
 - (vi) *the firm must not receive from a person other than its client any pecuniary reward or other advantage, for which it does not account to its client (see 3(7) of the ACCA Rulebook for more details), arising out of its carrying on of regulated activities.*

The firm cannot receive from anyone, except the client, any pecuniary reward or advantage from a third party without accounting for it to the client (s. 327 (3));

The person carrying out the regulated activities must be a member of the profession, and the firm must be permitted to carry on the regulated activities under the rules of their DPB (s. 327 (2)); and

The activities cannot be restricted elsewhere (s. 327 (5) and (6)).

6. Do I need to have a practicing certificate to benefit from the provisions of Part XX of FSMA?

Yes.

7. Why was the DPB regime introduced?

Part XX of the act was introduced because the previous regulator was aware that many of the professional firms that had sought authorisation under earlier regimes had done so because they felt that, in carrying out their professional services, they might inadvertently cross the line between providing professional services and carrying out regulated activities. The regulator felt that requiring double authorisation for firms carrying out regulated activities only as an incidental part of their

professional work was too onerous a requirement. It was therefore decided to allow professional firms to provide these incidental regulated activities under the supervision of a DPB, being their regulatory body.

8. Are there any other activities that do not require regulation?

In addition to assisting with the definition of regulated activities, the RAO creates a number of 'exclusions'. This means that certain activities, which on the face of it are regulated, are effectively excluded from the scope of the regulatory regime for policy reasons. Where an exclusion applies, such activities can be carried out without the need for FCA authorisation or reliance on one of the exemptions. Section 19 of FSMA does not apply, and the activity effectively becomes 'unregulated' or, in simple terms, not requiring regulation.

9. A detailed explanation of the exclusions is beyond the scope of this guide. However, those that are most relevant to accountants are set out below:

Acting as a personal representative or trustee (Article 66)

Where a member of the firm is acting as a trustee (whether or not there are also lay trustees) or personal representative, they can (among other things) deal, arrange, manage and advise on investments provided the following criteria are met:

- You must not receive any remuneration in addition to any remuneration you may receive for providing the services of a trustee, but this does not prevent you from charging on a time basis for any additional time you spend on any of these activities (eg by attending a meeting at which decisions are made). This condition does not apply where you are dealing. When advising, this exclusion is limited to advice given to co-trustees.
- For the activities of dealing and managing, you must not hold yourself out as providing such services so you must be careful about the way in which you promote your firm's trust services. This exclusion also applies to other members of the firm who carry out regulated activities on behalf of the member of the firm who is the trustee.

This exclusion does not apply to contracts of insurance or life policies.

The Necessary Exclusion (Article 67)

This exclusion applies to dealing as agent, arranging and advising in the course of a profession or business that does not otherwise consist of regulated activities and is available where those activities may reasonably be regarded as 'a necessary part of other services provided in the course of that profession or business'. For instance, it may be necessary to dispose of investments in a trust in some circumstances, eg where a tax bill needs to be paid. Similarly, arranging the sale of all assets in an estate in order to pay debts or beneficiaries may fall within the exclusion. The exclusion is less likely to apply where there is a choice of investments that could be sold.

There must also be no separate remuneration for the advice or arrangement. This means you should not show the work done in advising or arranging separately in your bill.

This exclusion does not apply to contracts of insurance, nor life policies. The exclusion in Article 72C (see below) may be of assistance.

Sale or Purchase of a Body Corporate (Article 70)

This exclusion allows you to deal, advise on or arrange the purchase or sale of shares where:

- both the seller and the buyer are themselves either a company, a partnership, a single person or a connected group; and
- the object of the transaction is the acquisition of the day to day control of the affairs of the company.

Generally speaking, 50% or more of the voting shares must be involved, but it is possible to add the number of shares being acquired to the number already held by the buyer(s) to reach the 50% threshold. Fundamentally, the object must be the acquisition of the day-to-day control of the affairs of the company, irrespective of the amount of shares actually involved in the transaction.

Where a group of persons are acting together, it may be difficult to establish that they seek to possess a controlling interest. A group of persons must be acting in concert to meet the test. The firm does not need to act for all of the potential shareholders, provided those it collectively represents are seeking to acquire control.

Activities Carried on in Connection with Employee Share Schemes (Article 71) This article provides that a company (C), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by Article 14 (dealing in investments as principal) by entering as principal into a transaction the purpose of which is to enable or facilitate:

- transactions in shares in, or debentures issued by, C between, or for the benefit of, employees or former employees of C or of another member of the same group as C or the wives, husbands, widows, widowers, or children or stepchildren under the age of 18 of such employees or former employees; or
- the holding of such shares or debentures by, or for the benefit of, such persons.

10. Can I just refer a client to another expert, either an independent financial adviser (IFA) or a stockbroker, for example?

It depends on how involved you are in the transaction. It was noted earlier that arranging deals in investments is a specified kind of activity (Article 25).

Arrangements that do not in fact cause a deal are excluded (Article 26). Whether or not an accountant can satisfy this requirement depends on how key their role was. The key question is whether the accountant's involvement in the chain of events leading to the transaction was important enough that, without it, there would be no investment contract. Instances of when the accountant's role was that important would include negotiating the terms of the contract or, in the case of insurance, assisting in the completion of the proposal form and sending it to the insurer.

A further exclusion exists under Article 29, which is similar to the Article 22 exclusion. It is known as the execution-only exclusion. To rely on it, the client must either be advised by an authorised person (AP) or, if not, must not be seeking advice from the accountant (or, if they have sought advice, the accountant has declined to give it but has recommended the client to seek advice from an authorised person).

As with Article 22, you must account to the client for any commission you receive. The transaction must also be made with or through an AP. The Article 29 exclusion does not apply to contracts of insurance or life policies.

If you are introducing a client to an authorised or exempt person (eg a stockbroker) for the provision of independent advice, you can rely on the exclusion under Article 33. However, the introduction must note that the client cannot be given any further advice by the accountant on the proposition, nor can they retain an ongoing role. This exclusion does not apply to contracts of insurance or life policies. Accountants who are not regulated by the FCA who want to introduce clients to an IFA to advise on, or arrange, such products may be able to rely on the exclusion in Article 72C (see above).

If the investment is a regulated mortgage contract, you can introduce a client to an authorised lender or broker to arrange and/or advise on the regulated mortgage contract under Article 33A, provided the firm does not receive any money from the client.

CORPORATE FINANCE

1. Can I advise on business funding?

Members are regularly asked by their clients for advice on various aspects of finance. A range of activities may come under the heading of corporate finance, from raising finance using bank loans and share issues through to corporate restructuring, mergers and acquisitions. So the answer to the question depends on the type of finance being accessed; for instance, advising a company on the issue of shares is not a regulated activity. However, advice on, or arranging, the purchase of shares is a regulated activity, since acquisitions will most often be structured to secure control of the target company. In many of these situations, the RAO Article 70 'sale of a body corporate' exclusion can be used (where the objective of the transaction is to secure 'control') and the activity will not then be regulated.

2. Examples of activities that any firm can undertake

- advising and/or arranging on the issue of shares (but not the sale/subscription)
- company secretarial services
- advising and/or arranging for any of the parties to a takeover by company A of company B (whether or not the bid is successful)*
- advising a company on becoming a public company
- advising a company on a share buyback
- advising and/or arranging on a management buy-out*

3. Examples of specific activities that an accountancy firm can undertake under the DPB rules

- advising and/or arranging for a client to subscribe for shares (but not giving advice to a lay individual in respect of shares that are traded on a public market or where there is an intention to trade them on a public market)
- advising and/or arranging for shareholders to buy or sell shares that are not traded on a public market, nor is there an intention to trade them on a public market
- advising and/or arranging for shareholders on whether to take up an offer in a rights issue where the shares are not traded on a public market, nor is there an intention to trade them on a public market
- advising and/or arranging for shareholders to sell shares, whether or not traded on a public market
- advising a bank or borrower on the legal aspects of private sector borrowing (ie bank and building society loans).

4. Examples of activities that only an FCA-authorised firm can undertake:

recommending the purchase of a specific publicly tradable share to a lay individual

- advising a lay shareholder to take up an offer in a rights issue from a publicly quoted company.

*The examples given here relate to takeover situations where the purchaser is intending to acquire day-to-day control of the company through the purchase of shares.

MORTGAGES

1. What are regulated mortgages and unregulated mortgages? A regulated mortgage satisfies all the following conditions:

- The lender takes a first charge over property in the UK.
- The borrower is an individual or trustee.
- The property is at least 40% occupied by the borrower or a member of their immediate family. The 40% refers to area (ie the purchaser buys a property to live in and rents out some rooms).

Some examples of unregulated mortgages would be:

- second charge on principal residence
- mortgage on commercial property
- mortgage taken out by a limited company
- buy-to-let mortgages.

2. Can generic advice be given about regulated mortgages?

Yes. For advice to require regulation, it must relate to a specific investment and must be given to the person in their capacity as an investor or potential investor, or in their capacity as an agent for an investor. The advice must also relate to the merits of buying, selling, subscribing for or underwriting the investment. If it does not have all of these characteristics then it is 'generic advice' and is not regulated. So advice about different types of mortgage, eg 'repayment', 'ISA' or 'pension', without relating this to specific companies would be generic and therefore acceptable.

3. Can specific advice be given about regulated mortgages if the client is the borrower?

- No: if the client is an individual or a trustee (eg a trustee of a pension scheme), FCA authorisation is required to give this advice.
- Yes: if the client is not an individual or a trustee (eg a limited company).

4. Can specific advice be given about regulated mortgages if the client is the lender?

Yes.

5. Can I arrange a regulated mortgage?

Only if authorised by the FCA.

6. Can I arrange a regulated mortgage on an execution-only basis (client specifies the lender, product and timing of the borrowing)?

Only if eligible for the DPB regime or authorised by the FCA. Members should note that most people will need advice and should only act on an execution-only basis if they consider that the client is sufficiently knowledgeable. In any event, written confirmation must be sent to and received from the client as required by the *Rulebook* (see below).

7. What must a firm do when carrying out execution-only business?

Where a firm is treating a client as an execution-only client it must:

- a) notify the client accordingly and obtain a written acknowledgement from the client. In addition, written evidence of specific instructions from execution-only clients must be made, including written confirmation that the client did not seek or receive advice from the firm regarding a transaction. The transaction must have been entered into on the client's explicit instructions; and
- b) have reasonably assessed and concluded that the client can be expected to understand the risks involved in the transaction.

8. Would arranging include help with the completion of the application form?

Yes.

9. Would arranging include sending the form to the lender with a cheque if applicable?

Yes.

10. Can advice be given about the risks of mortgages in general?

Yes. This would be classed as generic advice.

11. Can advice be given about the risks of a specific mortgage?

If you are eligible for the DPB regime you can advise on the factual terms and point out risks, but this should not include qualitative advice, ie you should not suggest that a specific mortgage is better or worse than another. If a mortgage is particularly inappropriate for a client, your client might expect you, as a professional adviser, to provide 'negative' advice warning them about particular risks.

12. If a client has a property with a mortgage, can I give advice about a second mortgage on the property including specific recommendations?

Yes. If, however, the first charge is redeemed at the same time then FCA authorisation is required.

13. Are there any other restrictions on second charges?

No.

14. Are there any restrictions on advising on and arranging unsecured borrowing?

No.

15. Can I provide a cashflow forecast to a client to help them obtain borrowings?

Yes.

16. Can I provide a reference to a lender on a client?

Yes, but it may be advisable to use a suitable disclaimer when reporting to the potential lender.

17. Can I complete a questionnaire for a lender relating to a client?

Yes, but it may be advisable to use a suitable disclaimer when reporting to the potential lender.

18. Can I give advice about various borrowing options?

If you are eligible for the DPB regime you can advise on the factual terms and point out risks, but this should not include qualitative advice, ie you should not suggest that a specific mortgage is better or worse than another. If a mortgage is particularly inappropriate for a client your client might expect you, as a professional adviser, to provide 'negative' advice warning them about particular risks.

19. Can I recommend the client to a building society, bank, other lender or does the person or body I recommend need to be an IFA?

You can refer a client to a lender or to an IFA. You can recommend a client to a restricted adviser provided the client is fully informed of the limitations of their advice.

20. What is the difference between an independent adviser and a restricted adviser?

Independent advisers

An adviser or firm that provides independent advice is able to consider and recommend all types of retail investment products that could meet your needs and objectives. Independent advisers will also consider products from all firms across the market, and have to give unbiased and unrestricted advice. An independent adviser may also be called an 'independent financial adviser' or 'IFA'.

Restricted advisers

A restricted adviser or firm can only recommend certain products, product providers, or both. The adviser or firm has to clearly explain the nature of the restriction. If you are not sure you should ask for further information, but some examples of restricted advice are where:

- the adviser works with one product provider and only considers products that company offers
- the adviser considers products from several – but not all – product providers
- the adviser can recommend one or some types of products, but not all retail investment products
- the adviser has chosen to focus on a particular market, such as pensions, and considers products from all providers within that market.

Restricted advisers and firms cannot describe the advice they offer as 'independent'.

21. What if the client wants advice about an investment product (eg an endowment or pension) linked to a mortgage?

You would require authorisation from the FCA to give such investment advice unless it was purely generic advice or you refer the client to an appropriate, authorised, adviser.

LONG-TERM CARE INSURANCE

1. Can I give generic advice?

Yes.

2. Can I give any specific advice?

No, unless you are authorised by the FCA.

3. Can I comment on the advice given by an IFA whether or not the contract contains an investment element?

Yes, under the DPB regime, but not if your comment amounts to advice to purchase an alternative product.

4. What is an investment element?

There is an investment element if a fund is being built up. Now long-term care insurance policies are regulated the same, whether or not there is an investment element.

INSURANCE DISTRIBUTION ACTIVITIES (INCLUDING FEE PROTECTION)

Insurance distribution has the meaning given by article 2 of the Insurance Distribution Directive, and comprises the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim;

1. Can I give generic advice?

Yes.

2. Can I recommend a client to a third party? If so, what kind of third party can be recommended?

You can only recommend a third party if that third party is on the FCA register to undertake insurance distribution activities.

If recommending an IFA on this register, this is unregulated. If recommending a third party who is on the FCA register but not an IFA, you need to be registered under the DPB regime.

3. Do I need to recommend more than one such third party?

No.

4. Can I earn commission by referring a client to a third party?

Yes. The firm can receive commission, but the firm **must not contact** the broker/independent financial adviser/insurer on the client's behalf, as this will then become a regulated activity. The firm must follow the provisions of the *ACCA Rulebook*.

Commission and other financial gains

220.18 *Where any commission, fee, reward or other financial gain is received by a firm or anyone in the firm, in return for the introduction of clients, as a result of advice or other services given to clients, or as a result of using information known about clients, the professional accountant in public practice shall, when necessary, establish safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards shall generally include: (a) disclosing to the client in writing any arrangement to receive a referral fee, both of the fact that such commission, fee, reward or other financial gain will be or has been received and, as soon as practicable, of its amount and terms; and (b) obtaining advance agreement from the client for any referral arrangement in connection with the sale by a third party of goods or services to the client.*

220.19 *The provisions in paragraph 220.18 apply to any commission, fee, reward or other financial gain received, whether it relates to a single transaction concerning a client or more than one client, or a series or group of transactions concerning a client or more than one client. For the avoidance of doubt, this includes 'override' commission, whereby in some jurisdictions commission may be earned if the number of financial products of a particular type sold by a professional accountant in public practice reaches a certain level.*

5. If I do earn commission are there any restrictions on what I can do with that income?

The commission income does not have to be passed on to the client, so it can be retained.

6. Can I explain the terms of an insurance policy/contract to my client?

Yes.

7. Can I assist a client to make a claim relating to the amount of an insured loss?

Yes.

8. Can I assist a client to settle a claim with the insurance company?

Yes.

9. Can I appear as an expert witness in court relating to an insurance claim, either as a witness for the claimant or the insurance company?

Yes. DPB registration is not required for this.

10. Can I introduce a client to a third party regulated by the FCA?

Yes. DPB registration is not required for this.

11. Can I introduce a client to a third party who is not regulated by the FCA?

No, if the third party is not on the FCA register.

12. After introducing a client to an intermediary, can I provide information to that intermediary if authorised to do so by the client?

Yes.

13. Can I recommend a specific insurance product?

Yes, if you are registered under the DPB regime and provided that it is not an insurance based investment product. Insurance-based investment products has the meaning given by article 2 of the Insurance Distribution Directive, and comprises an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.

14. Can I recommend a specific insurance provider?

Yes, a firm can provide the client with the name and contact details of an insurance broker/independent financial adviser who can provide the client with advice.

15. Can I give assistance to a client to effect insurance cover such as helping to complete the application forms?

Yes.

16. Can I charge an annual fee (of, say, £100) so that if the client has an HMRC enquiry in that year I will not charge for the work involved in the investigation if the fee costs are less than a given amount (say, £3,000)?

This may amount to the sale of insurance contracts, in which case the firm would need to be authorised directly with the FCA and licensed by the Department for Business, Innovation and Skills (BIS).

We advise that, if a firm is providing this kind of service to their clients, they make their own enquiries with the FCA (fca.org.uk) and obtain their own legal advice.

17. What kind of insurance policies/contracts can I advise on only if authorised by the FCA?

Pensions, endowments, whole-life contracts or anything with an investment element.

18. What types of insurance activities are not covered?

The following activities do not constitute insurance distribution and, as such, firms are free to carry on such activities as they do not fall within the Designated Professional Body Regulations:

- a) advising in general terms on the need for or level of insurance cover or providing information to the policyholder or potential policyholder of a general nature on insurance products, while making no recommendation of particular contracts of insurance

- b) carrying on insurance distribution where all of the following conditions are met:
- (i) the principal activity of the person is other than insurance distribution
 - (ii) the contract of insurance is not a contract of long-term insurance
 - (iii) the contract of insurance has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less
 - (iv) the contract of insurance has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euros or less, or the equivalent amount in other currency
 - (v) the insurance covers non-motor goods or travel insurance
 - (vi) the contract of insurance does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract)
 - (vii) the insurance is complementary to the non-motor goods or service supplied by any provider
 - (viii) the contract of insurance is of such a nature that the only information needed is the cover provided.

19. Can an ACCA accountant produce a profit forecast for a client in relation to an insurance claim for a loss of profit incurred by a business resulting from an event for which there was an insurance policy in place to cover such loss?

A firm may provide information to clients to assist in claims handling but should not fill in all or a significant part of the form for the client as this may be considered to be the regulated activity of assisting in the administration and performance of a contract of insurance.

GENERAL ADVICE

1. If I want to come under the DPB regulations just for insurance distribution activities, what should I do? Would it be different if I wanted to do two or three of the above activities?

- a) A firm cannot be authorised by the FCA and come within the DPB regime.
- b) ACCA has put in place a simple set of registration arrangements for firms that wish to undertake exempt regulated activities. There are no separate fees for firms registering to undertake exempt regulated activities.
- c) If your firm registered through ACCA to undertake exempt regulated activities previously, the nominated contact partner/director may submit the next year's registration renewal online by logging into myACCA using the firm's ACCA reference number and passcode.
- d) If your firm did not register through ACCA previously but now wishes to do so, the initial registration form can be downloaded from the 'Forms for Practitioners' section of ACCA's website at bit.ly/ACCA-era-app.

2. What level of professional indemnity insurance (PII) is required for eligibility to be under the DPB regime relating to mortgages, long-term care insurance, insurance distribution activities or a combination of these three?

For mortgages and long-term care insurance, there is no separate PII requirement and normal rules will apply. However, an ACCA firm wishing to carry on insurance distribution must comply with professional indemnity insurance requirements under the insurance distribution directive (IDD).

Firms undertaking insurance distribution services are required to hold professional indemnity insurance (PII) equivalent to at least €1,250,000 per claim and €1,850,000 in total. ACCA and FCA are aware that this will mean a significant increase in cover for many firms. However, as this amount is specified by legislation there is little scope for changing this.

Licensed firms only need to consider these PII limits if they are undertaking insurance distribution activities. If no insurance distribution activity is undertaken, then there is no need to consider this issue, the PII held by licensed firms under the ACCA's PII requirements will be sufficient.

Note that referring a client to another adviser is not an insurance distribution activity and is therefore not subject to the regulations.

3. What other rules are there concerning insurance distribution?

In addition to PII requirements, ACCA's Rulebook has some special requirements for firms intending to carry on, or agree to carry on, insurance distribution. These are set out in ACCA's *Rulebook* (starting on page 132).

4. Will I need to notify my professional indemnity insurers that I come within the DPB regime?

You are recommended to do so.

5. If a firm is registered under the DPB regulations, is there a requirement to refer to this on their stationery?

Although the stationery does not have to refer to this, the *Rulebook* says that firms that are regulated by the Association for investment business activities may use the following statement on their professional stationery:

'Regulated for a range of investment business activities by the Association of Chartered Certified Accountants'

Where a firm is involved in insurance distribution activities, question 13 below is also relevant.

6. Can I register under the DPB regime just in case I undertake these activities in the future?

Yes, if you are eligible to do so. Additional professional indemnity insurance will be required if registered to carry out insurance distribution services.

7. If I am currently registered under the existing DPB regime, when does this expire?

All firms' exempt regulated activities registrations are valid only until 31 December in the year of issue and are renewable annually. Members are asked to notify ACCA on the annual practising certificate renewal form by ticking a box relating to investment business, mortgage business or insurance mediation. Members can inform ACCA at any time that they want to undertake these activities, using the registration form: bit.ly/ACCAera-app.

8. If I am authorised directly with the FCA, can I also register under the DPB regime?

No.

9. If, after registering under the new DPB regime, I decide that I need authorisation from the FCA, what do I need to do?

Apply to the FCA for authorisation and notify ACCA when it is granted. You will automatically cease to be covered by the DPB regime.

10. Are there any disadvantages in being registered under the new DPB regime, such as application costs, annual costs, administration costs or specific wording required on stationery?

No.

11. How do I prove that I am registered under the new DPB regime? Will I receive a certificate or letter each year to verify this?

ACCA will send a letter to the firm to confirm it has been notified of the firm's request to be within the DPB regime. Before undertaking insurance mediation activities, the firm must check it is on the FCA register.

12. If I want to be authorised by the FCA, what are their deadlines for receiving my application?

It does take some time to become authorised by the FCA (usually a number of weeks), and the process may in some cases be complicated. It would be advisable to check with the FCA how long it expects this process to take and what information will be required. Please note that you cannot conduct any regulated activities until you have received authorisation.

13. Do I need to agree terms with a client when undertaking exempt regulated activities?

There must be a written agreement in place with the client covering the scope and terms of the work. The Insurance Distribution Directive also extends the rules to include placing the following statement in the agreement:

[This firm is/We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution, which is broadly the advising on, selling and administration of insurance contracts. We are an ancillary insurance intermediary according to article 2 of the Insurance Distribution Directive. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Association of Chartered Certified Accountants. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/register.

Full details of what should be covered in the agreement is as per guidance included in the FCA's Designated Professional Body Regulations 2001 (bit.ly/fca-exempt).

14. What continuing professional development (CPD) will be required to be within the DPB regime?

There are no additional CPD requirements.

COMMUNICATIONS WITH CLIENTS

1. Can a firm market its services under the DPB regime?

Section 21 of FSMA provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity, unless they are authorised or the content of the communication has been approved by an authorised person. Financial promotions may include a firm's own advertising material, such as a website, if the material refers to the fact that the firm provides regulated activities. A breach of s.21 of FSMA is of itself an offence under s.25 of the act. The penalties are the same as for breach of the general prohibition.

It is a defence for the person accused to show that they believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of s.21, by an authorised person, or that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

The act does not provide for accountancy firms who may wish to issue communications in relation to their exempt regulated activities. However, Articles 55 and 55A of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (as amended) (the FPO) contain provisions that allow firms to advertise the exempt regulated activities they are able to carry out.

The FPO distinguishes between 'real-time communications' – made verbally, either face-to-face or over the telephone – and 'non-real time communications', which include letters, emails, brochures and website communications.

2. What are ACCA's rules on communications?

The *Rulebook* contains full guidance that regulates how a firm communicates with their clients. The main points are:

Fair and clear communications

- a) A firm must avoid any representation to a client that it is authorised under the act or regulated by the FCA or that the regulatory protections provided by the act are available. Where a firm is conducting insurance distribution, it is particularly important that the client understands that the firm's inclusion on the Financial Services Register is not the same as being authorised under the act.
- b) A firm may make a communication with another person which is designed to promote the provision of exempt regulated activities only if it can show that it believes on reasonable grounds that the communication is fair and not misleading. Marketing communications shall always be clearly identifiable as such.
- c) A firm must take reasonable steps to ensure that any agreement, written communication, notification or information which it gives or sends to a client to whom it provides exempt regulated activities is presented fairly and clearly.
- d) A firm must ensure that the client receives sufficient, relevant, objective information about any recommended investment or insurance contract so that he has an adequate basis on which to accept or reject the recommendations. The firm must make clear that it will supply the client with more detailed information if he so requires.

In addition, where a firm carries on insurance distribution:

- a) All information to be provided to clients under this regulation 6 must be communicated clearly and accurately on paper, free of charge, in English or in any other language agreed upon by the parties.
- b) Where a firm conducts insurance distribution over the telephone, the prior information given to the client must comply with the Financial Services (Distance Marketing) Regulations 2004. Information must then be provided to the client in accordance with regulation 6(8)(a) immediately after the conclusion of the contract of insurance.
- c) Information to be provided under this regulation 6 may be provided by way of email, where:
 - (i) the use of email is appropriate in the context of the business conducted; and
 - (ii) the customer has been given the choice between information on paper and by email, and has chosen the latter; and
 - (iii) there is evidence that the customer has regular access to the internet.
- d) In relation to the distribution of non-life insurance products as listed in Annex Directive 2009/138/EC, the information referred to in regulation 6(1)(d) shall be provided by way of a standardised insurance product information document drawn up in accordance with article 20 points 6 to 8 of the Insurance Distribution Directive.

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