

PRA RULEBOOK: GENERAL PROVISIONS INSTRUMENT [YEAR]

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 [Year]

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

Commencement

- E. This instrument comes into force on [DATE].

Citation

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

By order of the Board of the Prudential Regulation Authority
[DATE]

Annex A

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

Part

GENERAL PROVISIONS

Chapter content

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1 APPLICATION AND DEFINITIONS

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

1.2 In this Part, the following definitions shall apply:

client

has the meaning given in the *FCA Handbook* from time to time other than for the purposes of the part of the *FCA Handbook* in Specialist sourcebooks that has the title Professional Firms.

consumer

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

cross-border services

- (1) in relation to a *UK firm*, services provided within an *EEA State* other than the *UK* under the freedom to provide services; or
- (2) in relation to an *incoming EEA firm* or an *incoming Treaty firm*, services provided within the *UK* under the freedom to provide services.

customer

has the meaning given in the *FCA Handbook* from time to time for the purposes of the *FCA's rule* in *GEN 4.4.1R(1)(a)(ii)*.

eligible counterparty

has the meaning given in the *FCA Handbook* from time to time 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* from time to time other than for the parts of the *FCA Handbook* in Prudential Standards that have the titles Prudential sourcebook for Insurers and Interim Prudential sourcebook for Insurers.

incoming ECA provider

has the meaning given in the *FCA Handbook* from time to time.

MiFID business

means *investment services and activities* and, where relevant, *ancillary services* carried on by a *MiFID investment firm*.

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* from time to time

non-investment insurance contract

has the meaning given in the *FCA Handbook* from time to time.

professional client

has the meaning given in the *FCA Handbook* from time to time.

regulated market

has the meaning given in the *FCA Handbook* from time to time.

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

- 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 it is taking and proposes to take to deal with the consequences of the emergency.

3 DISCLOSURE TO RETAIL CLIENTS

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";

[See Note 1]

- (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."

[See Notes 1, 2, 3 and 3a]

- (3) for an *incoming firm* without a *top-up permission* either:
 - (a) "Authorised by [name of Home State regulator]"; or
 - (b) "Authorised by [name of Home 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";

[See Note 1, 2, 2a, 2b and 3]

- (4) for an *incoming firm* with a *top-up permission*, "Authorised by [name of Home 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";

[See Note 1, 2, 2b and 3]

- (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]"; and

[See Note 4]

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

[Note 1: A firm must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.]

[Note 2: An incoming firm or overseas firm is free to translate the name of its Home State regulator or overseas regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.]

[Note 2a: An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the customer that it is regulated or supervised by the FCA or PRA, in which case it must make disclosure (b).]

[Note 2b: An incoming EEA firm exercising establishment rights in the UK under the CRD, which do not include the activity of acceptance of deposits and other repayable funds, will be subject to branch liquidity and other supervision by the FCA.]

[Note 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.]

[Note 3a: An overseas firm that is not an incoming firm is only required to disclose its authorisation and/or regulated by an overseas regulator if it is so authorised and/or regulated.]

[Note 4: If the appointed representative has more than one principal, the disclosure must relate to the principal or principals responsible for the regulated activity or 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.]

[General Note: 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

- 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

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*.
- (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

6.1 This Chapter:

- (1) subject to (2), applies to every *firm* and with respect to every *regulated activity* if, 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-authorized 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

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*.

6.4 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*.

Part

GENERAL PROVISIONS

Externally defined glossary terms

Term	Definition source
<i>appointed representative</i>	<i>s39(2) 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>
<i>rule</i>	<i>s417(1) FSMA</i>