

## Acting as Insurance Intermediaries Guidance

### Legislative Background

1. The Insurance Mediation Directive (2002/92/EC) requires that arrangers or sellers of insurance products be regulated. Generally providers must be regulated by the FCA (known as **FSMA Authorised Persons**). There is a limited exception for professionals, whose regulatory body is a Designated Professional Body under Part XX of **FSMA**. This exemption regime is designed to exclude professional firms which are not carrying on mainstream financial services activities from the requirement to be authorised by the FCA.
2. Any body wishing to provide **Regulated Activities** (to include insurance services) other than as permitted by the **CLC** or, as appointed agent for an insurer, may only do so if regulated by the FCA.
3. The **CLC** is itself regulated by the FCA and must comply with directions it is given.
4. With the agreement of the FCA, the Council has resolved  
  
“In accordance with requirement 14 of the ‘**CLC** Designated Professional Bodies Code’ each **CLC** Body is permitted to carry out all insurance activities incidental to **Regulated Services** provided by that body to any **Client** including (without limiting the generality of this Resolution) Abortive Costs Indemnity Insurance, Household and Estate Property Insurance, Term Policies for IHT, Missing Beneficiary insurance, Deposit Guarantee Insurance and Title Indemnity Policies relating in particular to Restrictive Covenants, Absence of Easements, Insolvency Acts, Registered Possessory Titles, Lost Title Deeds, Missing Particulars (Registered Titles), Good Leasehold, Absent Landlords, Missing Rent-charge Owners, Flat/Maisonette Indemnities, Flying Freeholds, Search Indemnities, Absence of Deeds of Postponement on Right to Buy Transactions, Defective Leases, Contingent Buildings Insurance, Forfeiture of Leases (Mortgagees only), Superior Leases, Lease Enlargements, Planning Permissions, Building Regulations and Endorsements, Chancel Liability and Contaminated Land.”
5. The term “arrange” is wide ranging and includes helping a **Client** to complete a proposal form.
6. This Code is drafted so that the range of products covered by the **CLC’s regulatory arrangements** may be extended by resolution of the **CLC** with the agreement of the FCA.

### Incidental

7. The **Regulated Activities** you provide must be incidental in two senses:-
- (i) In the provision of a particular **Regulated Activity** to a particular **Client**, you **carry on** only **Regulated Activities** which arise out of, or are complementary to, the provision by the body of that **Regulated Activity** to that **Client** (s.332(4) **FSMA** and requirement 14); and
  - (ii) Any service provided in the course of **carrying on a Regulated Activity** must be incidental to the **Professional Services** you provide (s.327(4) **FSMA** and requirement 17).
8. (a) The FCA considers that to satisfy the condition in s.327(4) **FSMA Regulated Activities** cannot be a major part of the body's practice.
- (b) The FCA also considers the following further factors to be relevant:
- (1) the scale of **Regulated Activity** in proportion to other **Professional Services** provided;
  - (2) whether and to what extent services that are **Regulated Activities** are held out as separate services; and
  - (3) the impression the body gives, for example, through its advertising or other promotions of its services, as to how **Regulated Activities** are provided;
- (c) In the FCA's opinion, one consequence of this is that a body cannot provide services which are **Regulated Activities** if they amount to a separate business conducted in isolation from the provision of **Professional Services**. This does not, however, preclude it from operating its professional business in a way which involves separate teams or departments, one of which handles the **Regulated Activities**.
- (d) For the purpose of s.327(4), **Professional Services** are services which do not constitute **carrying on a Regulated Activity**, and the provision of which is supervised and regulated by a Designated Professional Body, such as the **CLC** (s.327(8) **FSMA** and Glossary of Terms)
- Example: when acting for the buyer of a property you may arrange a missing landlord indemnity policy on behalf of that buyer. You may not arrange that same policy to a different **client** as a stand alone product.

#### **Accounts to**

9. The FCA considers that, in order for a **Client** to be accounted to for the purposes of s.327(3) **FSMA**, you must treat any commission or other pecuniary benefit received from third parties and which results from **Regulated Activities** carried on by the body, as held to the order of the **Client**. You will not be accounting to the **Client** simply by telling them that you receive commission. Unless the **client** agrees to you keeping it, the commission belongs to them and must be paid to them. There is no de minimis below which you may retain the sum. In the FCA's opinion, the condition would be satisfied if you pay over to the **Client** any third party payment received. Otherwise, it would be satisfied by informing the **Client** of the payment received and advising the **Client** that they have the right to require the body to pay them the

sum concerned. This could then be used to offset fees due from the **Client** in respect of **Professional Services** provided or in recognition of other services provided. However, it does not permit retention of third party payments by seeking the **Client's** agreement through standard terms and conditions. Similarly, a mere notification to the **Client** that a particular sum has been received coupled with your request to retain it does not satisfy the condition.

**Enforcement:**

**Restrictions**

10. Where the FCA makes orders affecting individual bodies, the **CLC** may withdraw permission.

**Disciplinary Steps**

11. Where a body is in breach of the Code the **CLC**, may:-

- (i) impose a condition on a **licence**; or
- (ii) take disciplinary proceedings against the body and its **Manager** or **Head of Finance and Administration**;
- (iii) withdraw its permission.

