

Chapter 2

The threshold conditions

2.2 Location of offices

2.2.1 UK [deleted]

Paragraph 2B of Schedule 6 to the Act

- 2.2.1A UK
- (1) Unless sub-paragraph (3), (4)(a) or (7) applies, if A is a body incorporated in the United Kingdom -
 - (a) A's head office, and
 - (b) if A has a registered office, that office, must be in the United Kingdom.
 - (2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.
 - (3) If-
 - (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
 - (b) A is a body corporate with no registered office, and
 - (c) A's head office is in the United Kingdom,A must carry on business in the United Kingdom.
 - (4) If A is seeking to carry on, or is carrying on, an insurance distribution activity-
 - (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
 - (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A's residence is resident in the United Kingdom.
 - (5) "Insurance distribution activity" means any of the following activities-
 - (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in paragraph (a) to (d).

- (6) Sub-paragraph (5) must be read with-
 - (a) section 22
 - (b) any relevant order under that section; and
 - (c) Schedule 2.

- (7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.

2.2.1B **G** Paragraph 2B of Schedule 6 to the *Act* sets out the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.2.1C **G** The *FCA* is not responsible for the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.2.2 **G** Paragraph 2B(1) of Schedule 6 to the *Act* implements article 7(1)(d) of the *UCITS Directive*, paragraphs 2B(1) to 2B(23) of Schedule 6 to the *Act* implement article 5(4) of *MiFID*, paragraph 2B(4) of Schedule 6 to the *Act* implements article 2(1)(10) of the *IDD* and paragraph 2B(7) of Schedule 6 to the *Act* implements article 8(1)(e) of *AIFMD*, although the *Act* extends the *threshold condition* set out in paragraph 2B of Schedule 6 of the *Act* to *authorised persons* that are not *PRA-authorised persons* who are outside the scope of these *Single Market Directives*.

2.2.3 **G** Neither the *UCITS Directive*, *MiFID*, the *IDD*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

- (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and

- (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).