

Chapter 1

Application

1.1 Application and purpose

Application

- 1.1.1** **G** There is no overall application provision for *MIFIDPRU*. Each chapter or section has its own application statement. However, *MIFIDPRU* broadly applies to the following:
- (1) *MIFIDPRU investment firms*;
 - (2) *UK parent entities*; and
 - (3) *parent undertakings* in an *investment firm group* that are incorporated in, or have their principal place of business in, the *United Kingdom*.
- 1.1.2** **G**
- (1) The definition of a *MIFIDPRU investment firm* includes a *collective portfolio management investment firm*. This means that a *collective portfolio management investment firm* must comply with the rules in *MIFIDPRU*, except to the extent that a provision of *MIFIDPRU* otherwise provides.
 - (2) A *collective portfolio management investment firm* is also subject to the prudential requirements in ■ *IPRU-INV 11* (Collective Portfolio Management Firms and Collective Portfolio Management Investment Firms). These *firms* should refer to ■ *IPRU-INV 11.6* for further *guidance* on how the requirements in *MIFIDPRU* interact with the requirements in ■ *IPRU-INV 11*.
 - (3) As explained in ■ *MIFIDPRU 1.1.5G*, many requirements in *MIFIDPRU* apply only in relation to the *MiFID business* of a *firm* and therefore will not apply to the collective portfolio management activities carried on by a *collective portfolio management investment firm*. However, some requirements in *MIFIDPRU* apply to the *firm* as a whole.
- 1.1.3** **G** *MIFIDPRU* does not directly apply to an *undertaking* which is not incorporated in, and does not have its principal place of business in, the *United Kingdom*. However, *MIFIDPRU* imposes some obligations on *UK parent entities* and *responsible UK parents* relating to *undertakings* established in a *third country* that form part of the same *investment firm group*. ■ *MIFIDPRU 2* (Levels of application) contains additional *guidance* on the application of *MIFIDPRU* to *investment firm groups*.

1.1.4

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- (1) This *guidance* provision applies to a *third country MIFIDPRU investment firm*. It is without prejudice to the *FCA's* general approach to authorising *overseas firms*.
- (2) The *FCA* will not normally give a *Part 4A permission* to a *third country MIFIDPRU investment firm* unless the *FCA* is satisfied that the applicant will be subject to prudential regulation by a *regulatory body* in its home jurisdiction and the regulatory requirements are broadly equivalent to the requirements that would apply under *MIFIDPRU*.
- (3) When conducting the assessment in (2), the *FCA* will take into account the following non-exhaustive list of factors:
 - (a) whether the requirements of the jurisdiction are likely to achieve similar prudential outcomes to *MIFIDPRU*;
 - (b) how the overseas *regulatory body* supervises and enforces those requirements in practice;
 - (c) the broader legal framework applicable to the applicant in the jurisdiction; and
 - (d) whether there are adequate arrangements in place between the *FCA* and the overseas *regulatory body* to facilitate any necessary supervisory cooperation.
- (4) The *FCA* considers that the approach described in (2) and (3) is consistent with the following:
 - (a) The requirements in the *threshold conditions* including, in particular, the effective supervision *threshold condition* described in ■ COND 2.3, the appropriate resources *threshold condition* described in ■ COND 2.4 and the suitability *threshold condition* described in ■ COND 2.5.
 - (b) The need for the *FCA* to be able to apply effective supervision to a *third country MIFIDPRU investment firm* to ensure appropriate protection for *consumers* or potential *consumers*. This relies on cooperation between the *FCA* and the overseas *regulatory body* that supervises that *third country MIFIDPRU investment firm* and on the *FCA* being able to place appropriate reliance on the supervision applied by that overseas *regulatory body*.
- (5) If a *third country MIFIDPRU investment firm* is not subject to prudential regulation by a *regulatory body* in its home jurisdiction which is broadly equivalent to the requirements that would apply under *MIFIDPRU*, the *FCA* will normally expect it to establish a *subsidiary* in the *United Kingdom*. That *subsidiary* would need to be authorised as a *MIFIDPRU investment firm* and would then be directly subject to the requirements in *MIFIDPRU*. The *subsidiary* would need to demonstrate that it meets the *threshold conditions* to obtain *authorisation*.
- (6) Although a *third country MIFIDPRU investment firm* that is granted a *Part 4A permission* is not subject to *MIFIDPRU*, it must still comply with the requirements in the *threshold conditions* and *Principles* on an ongoing basis. This includes the obligation under *Principle 11* (Relations with regulators) to inform the *FCA* of anything of which the *FCA* would reasonably expect notice, which may include interactions between the *firm* and its overseas *regulatory body*.

		Purpose
1.1.5	G	The purpose of <i>MIFIDPRU</i> is to set out the detailed prudential requirements that apply to a <i>MIFIDPRU investment firm</i> . <i>MIFIDPRU</i> does not apply to a <i>designated investment firm</i> , which is subject to prudential regulation by the <i>PRA</i> . Generally, the <i>rules</i> in <i>MIFIDPRU</i> are intended to cover the <i>MiFID business</i> undertaken by a <i>firm</i> , but certain requirements apply to a <i>firm</i> as a whole.
1.1.6	G	The requirements in <i>MIFIDPRU</i> expand upon the basic requirements under the appropriate resources <i>threshold condition</i> referred to in ■ COND 2.4 and the requirement in <i>Principle 4</i> for a <i>firm</i> to maintain adequate financial resources.
		Tied agents
1.1.7	G	<p>(1) Certain provisions of <i>MIFIDPRU</i> refer to, or apply in relation to, <i>tied agents</i>. The definition of a <i>tied agent</i> refers to a <i>person</i> who, on behalf of an <i>investment firm</i> (including a <i>third country investment firm</i>):</p> <ul style="list-style-type: none"> (a) promotes <i>investment services</i> or <i>ancillary services</i> to <i>clients</i> or prospective <i>clients</i>; (b) receives and transmits instructions or orders from the <i>client</i> in respect of <i>investment services</i> or <i>financial instruments</i>; (c) places <i>financial instruments</i>; or (d) provides advice to <i>clients</i> or prospective <i>clients</i> in respect of <i>investment services</i> or <i>financial instruments</i>. <p>(2) The references in <i>MIFIDPRU</i> to <i>tied agents</i> do not include <i>appointed representatives</i> that do not meet the definition of a <i>tied agent</i> (for example, because the relevant <i>appointed representative</i> does not carry on its activities in relation to the <i>MiFID business</i> of its principal <i>firm</i>). However, a <i>firm's</i> potential responsibility for <i>appointed representatives</i> (whether or not they are also <i>tied agents</i>) will be a relevant factor for a <i>firm's</i> <i>ICARA process</i> under ■ MIFIDPRU 7 (Governance and risk management).</p>
		Voluntary application of stricter requirements
1.1.8	R	No provision in <i>MIFIDPRU</i> prevents a <i>firm</i> from: <ul style="list-style-type: none"> (1) holding <i>own funds</i> (or components of <i>own funds</i>) or <i>liquid assets</i> that exceed those required by <i>MIFIDPRU</i>; or (2) applying other measures that are stricter than those required by <i>MIFIDPRU</i>.
1.1.9	G	<p>(1) If a <i>firm</i> applies stricter measures than those required under <i>MIFIDPRU</i> in accordance with ■ MIFIDPRU 1.1.8R, the <i>firm</i> must still ensure that it meets the basic requirements of <i>MIFIDPRU</i>. This is illustrated by the following two examples:</p> <ul style="list-style-type: none"> (a) Example 1: A <i>firm</i> decides to hold <i>own funds</i> of 0.03% of its <i>average AUM</i>, rather than 0.02% as required under

■ MIFIDPRU 4.7.5R. This would be a stricter measure that still met the basic requirements of *MIFIDPRU* and therefore would be permitted under ■ MIFIDPRU 1.1.8R.

- (b) Example 2: A *firm* decides to hold a significant amount of additional *own funds* instead of applying the deductions from its *common equity tier 1 capital* required under ■ MIFIDPRU 3.3.6R. This is on the basis that the additional *own funds* far exceed the estimated value of the required deductions and the *firm* considers that the deduction calculations are too onerous. While the *firm* may consider that holding these additional *own funds* is a stricter measure, this approach would not meet the basic requirements of *MIFIDPRU*, which require the *firm* to calculate and apply the deductions. In addition, the failure to apply the correct deductions to *common equity tier 1 capital* may result in the *firm* incorrectly applying the *concentration risk* requirements and limits in ■ MIFIDPRU 5. This approach would therefore not be permitted under ■ MIFIDPRU 1.1.8R because it does not meet the basic requirements of *MIFIDPRU*.

- (2) If a *firm* wishes to apply a stricter measure but is unsure of whether that measure would meet the basic requirements of *MIFIDPRU*, it should discuss the proposal with the *FCA* before applying the measure.

Notifications and applications under MIFIDPRU for which there is no dedicated form

1.1.10

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This *rule* applies where:

a notification or an application for permission is required under a provision in (2); and

the provisions in *MIFIDPRU* do not specify that a particular notification or application form must be used for that purpose.

The relevant provisions in (1) are:

a *rule* in *MIFIDPRU*;

a provision of the *UK CRR* that is applied by *MIFIDPRU*; or

a provision in binding technical standards made for the purposes of the *UK CRR* where those binding technical standards are applied by *MIFIDPRU*.

Where this *rule* applies, a *firm*, *UK parent entity* or *GCT parent undertaking* that is subject to the relevant provision in (2) must:

where the provision requires a notification, complete the notification form in ■ MIFIDPRU 1 Annex 5R and submit it to the *FCA* using the *online notification and application system*; or

where the provision requires an application for permission, complete the application form in ■ MIFIDPRU 1 Annex 6R and submit it to the *FCA* using the *online notification and application system*.