

## Chapter 2

# Level of application of requirements

## 2.1 Application and purpose

### Application

2.1.1

**R**

■ MIFIDPRU 2 applies to:

- a *MIFIDPRU investment firm*;
- a *UK parent entity*;
- a *UK investment holding company, UK mixed financial holding company or UK mixed-activity holding company*; and
- a *parent undertaking* in the UK that is a *relevant financial undertaking* in an *investment firm group*.

### Purpose

2.1.2

**G**

This chapter contains:

- (1) a *rule* in ■ MIFIDPRU 2.2.1R applying requirements in this sourcebook to *MIFIDPRU investment firms* on an individual basis;
- (2) *rules* in ■ MIFIDPRU 2.3 outlining the circumstances in which a *MIFIDPRU investment firm* may apply to the *FCA* for an exemption from specific requirements in this sourcebook that apply on an individual basis;
- (3) *rules and guidance* in ■ MIFIDPRU 2.4 which cover:
  - (a) the definition of an *investment firm group*;
  - (b) the *undertakings* that are included within an *investment firm group*; and
  - (c) when and how an *investment firm group* may apply to the *FCA* for permission to use the *group capital test* as an alternative to the prudential consolidation requirements in ■ MIFIDPRU 2.5;
- (4) *rules and guidance* in ■ MIFIDPRU 2.5 which cover the following:
  - (a) when requirements in this sourcebook apply on a *consolidated basis*;
  - (b) the circumstances in which the *FCA* may permit an *investment firm group* to disapply certain prudential consolidation requirements; and
  - (c) how an *investment firm group* must apply obligations in this sourcebook on a *consolidated basis*;

- (5) *rules and guidance* in ■ MIFIDPRU 2.6 in relation to the *group capital test*; and
- (6) *rules and guidance* in ■ MIFIDPRU 2.7 which cover:
  - (a) additional requirements and *FCA* supervisory powers that are relevant to a *UK parent entity*; and
  - (b) additional requirements that are relevant to a *MIFIDPRU investment firm* which is a *subsidiary* of a *UK mixed-activity holding company*.

2

2.2 General principle

2.2.1

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A MIFIDPRU investment firm must comply with the rules in ■ MIFIDPRU 3 to ■ MIFIDPRU 9 on an individual basis.

## 2.3 Exemptions

### 2.3.1

**R** A MIFIDPRU investment firm will be exempt from ■ MIFIDPRU 8 (Disclosure) on an individual basis if:

- (1) the *firm* has applied to the *FCA* in accordance with ■ MIFIDPRU 2.3.3R;
- (2) the application in (1) demonstrates to the satisfaction of the *FCA* that:
  - (a) the *firm* is a *SNI MIFIDPRU investment firm*;
  - (b) the *firm* is a *subsidiary* and is included in the supervision on a *consolidated basis* of an *insurance undertaking* or *reinsurance undertaking* in accordance with Rule 10.5 of the *PRA Rulebook: Solvency II firms: Group Supervision*;
  - (c) the *firm* and its *parent undertaking* are subject to *authorisation* and supervision in the *UK*;
  - (d) *own funds* are distributed adequately between the *firm* and its *parent undertaking* and:
    - (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *parent undertaking*;
    - (ii) either the *parent undertaking* will guarantee the commitments entered into by the *firm*, or the risks in the *firm* are of negligible interest;
    - (iii) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *firm*; and
    - (iv) the *parent undertaking* holds more than 50% of the voting rights attached to shares in the capital of the *firm* or has the right to appoint or remove a majority of the members of the *firm's management body*.
- (3) the *PRA* does not object to the exemption.

### 2.3.2

**R** A MIFIDPRU investment firm will be exempt from ■ MIFIDPRU 6 (Liquidity) on an individual basis where:

- (1) the *firm* has applied to the *FCA* in accordance with ■ MIFIDPRU 2.3.3R;
- (2) the application in (1) demonstrates to the satisfaction of the *FCA* that:
  - (a) the *firm*:

- (i) is supervised on a *consolidated basis* in accordance with Chapter 2 of Title II of Part One of the *UK CRR*; or
  - (ii) is included in an *investment firm group* that is subject to ■ MIFIDPRU 2.5.11R and has not obtained the exemption referred to in ■ MIFIDPRU 2.5.19R;
- (b) the *parent undertaking*, on a *consolidated basis*, monitors and has oversight at all times over the liquidity positions of all *institutions* and *MIFIDPRU investment firms* within the group or sub-group that are exempted from liquidity requirements on an individual basis, and ensures a sufficient level of liquidity for all of those *institutions* and *MIFIDPRU investment firms*;
  - (c) the *parent undertaking* and the *firm* have entered into contracts that, to the satisfaction of the *appropriate regulator*, provide for the free movement of funds between the *parent undertaking* and the *firm* to enable them to meet their individual obligations and joint obligations as they become due;
  - (d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts in (c); and
- (3) the *PRA* does not object to the exemption if it is the consolidating supervisor of the group.

### 2.3.3

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An application referred to in ■ MIFIDPRU 2.3.1R(1) or ■ MIFIDPRU 2.3.2R(1) must:

- (1) be made using the form in ■ MIFIDPRU 2 Annex 1R; and
- (2) be submitted using the *online notification and application system*.

## 2.4 Investment firm groups: general

### Application and purpose

- 2.4.1** **R** This section applies to:
- (1) a *UK parent entity*; and
  - (2) a *MIFIDPRU investment firm*.
- 2.4.2** **G**
- (1) The definition of an *investment firm group* covers a *parent undertaking* that is incorporated in the *UK* or has its principal place of business in the *UK*, and its *subsidiaries*, at least one of which must be a *MIFIDPRU investment firm*.
  - (2) The definition of an *investment firm group* also includes *connected undertakings*. These are *relevant financial undertakings* that are not *subsidiaries*, but which form part of the *investment firm group* by one of the relationships listed in **■ MIFIDPRU 2.4.6R**.
  - (2) If the *subsidiaries* of the group include a *UK credit institution*, the group is not an *investment firm group*. However, if a *UK credit institution* is only a *connected undertaking* in relation to an *investment firm group*, the group is still an *investment firm group*. If the *investment firm group* includes a *subsidiary* or a *connected undertaking* that is *credit institution* established in a *third country*, the group is still an *investment firm group*.
- 2.4.3** **G**
- (1) When a *UK parent entity* or a *MIFIDPRU investment firm* is identifying whether it forms part of an *investment firm group*, it must identify all *relevant financial undertakings* that are either *subsidiaries* or *connected undertakings*.
  - (2) The *UK parent entity* or *MIFIDPRU investment firm* can use the analysis in (1) to determine whether the *investment firm group*:
    - (a) is likely to be subject to consolidation under **■ MIFIDPRU 2.5**; or
    - (b) has a sufficiently simple structure to justify submitting an application to the *FCA* to apply the *group capital test* under **■ MIFIDPRU 2.6**.
- 2.4.4** **G**
- (1) Where consolidation under **■ MIFIDPRU 2.5** applies, the definition of an *investment firm group* and the resulting *consolidated situation*

includes all *relevant financial undertakings* that are either *subsidiaries* or *connected undertakings*.

- (2) Where ■ MIFIDPRU 2.6 applies, the definition of an *investment firm group* means that the *group capital test* only applies to a *parent undertaking* in relation to *relevant financial undertakings* that are its *subsidiaries* or that are *connected undertakings* in which it holds a *participation* in accordance with ■ MIFIDPRU 2.4.15R. The *group capital test* does not apply in relation to a *relevant financial undertaking* that is a *connected undertaking* of the *parent undertaking* otherwise than due to a *participation*.
- (3) However, as explained in ■ MIFIDPRU 2.4.19G, where an *investment firm group* contains material *connected undertakings* (other than those connected by a *participation*), the *FCA* considers that the underlying structure of the *investment firm group* is unlikely to be sufficiently simple to permit the application of the *group capital test*. In that case, it is likely that the *UK parent entity* of the *investment firm group* will be subject to consolidation under ■ MIFIDPRU 2.5.

### Subsidiaries

2.4.5

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- (1) The definition of a *subsidiary* for the purposes of *MIFIDPRU* refers to any *undertaking* which is a “subsidiary undertaking” as defined in section 1162, read together with Schedule 7, of the Companies Act 2006.
- (2) Under section 1162(4) of the Companies Act 2006, this includes relationships where either of the following apply in relation to an *undertaking* (“A”) and another *undertaking* (“B”):
  - (a) A has the power to exercise, or actually exercises, dominant influence or control over B; or
  - (b) A and B are managed on a unified basis.
- (3) Under section 1162(5) of the Companies Act 2006, if an *undertaking* (“A”) has a *subsidiary undertaking* (“B”) and B is a *parent undertaking* of another *undertaking* (“C”), then C is also a *subsidiary undertaking* of A. As a result, the definition of a *subsidiary* in *MIFIDPRU* includes *subsidiaries of subsidiaries*.

### Connected undertakings: general

2.4.6

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An *undertaking* (“CU”) is a *connected undertaking* of another *undertaking* (“P1”) if:

- (1) P1 is connected to CU by *majority common management* in accordance with ■ MIFIDPRU 2.4.8R(1);
- (2) P1 exercises significant influence over CU in accordance with ■ MIFIDPRU 2.4.10R(1);
- (3) P1 and CU have been placed under single management, other than under a contract, clauses in memoranda or articles of association, in accordance with ■ MIFIDPRU 2.4.12R(1);
- (4) CU is a *subsidiary* of another *undertaking* (“P2”), and P2:



- (a) is connected to P1 by *majority common management* in accordance with ■ MIFIDPRU 2.4.8R(1); or
- (b) has been placed under single management with P1, other than under a contract, clauses in memoranda or articles of association, in accordance with ■ MIFIDPRU 2.4.12R(1); or

(5) P1 holds a *participation* in CU in accordance with ■ MIFIDPRU 2.4.15R.

2.4.7

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The criteria in ■ MIFIDPRU 2.4.8R(2)-■ (5) and ■ MIFIDPRU 2.4.12R(2)-■ (5) for determining the deemed *parent undertaking* in relation to a *connected undertaking* apply to the facts at the time when the relevant relationship is created. This means that a subsequent change in the *own funds requirement* of an entity or *investment firm group* does not change the deemed *parent undertaking*.

### Connected undertakings: majority common management

2.4.8

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This rule applies where:

- a *MIFIDPRU investment firm* is connected to a *relevant financial undertaking* by *majority common management*; or
- a *relevant financial undertaking* that forms part of an *investment firm group* is connected to another *relevant financial undertaking* by *majority common management*.

If only one of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

If both *undertakings* connected by *majority common management* form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation*, is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and both *undertakings* are *MIFIDPRU investment firms*, the *MIFIDPRU investment firm* with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other *MIFIDPRU investment firm* when applying the requirements in ■ MIFIDPRU 2.5.

If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and only one of the *undertakings* is a *MIFIDPRU investment firm*, the *MIFIDPRU investment firm* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

2.4.9

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A *MIFIDPRU investment firm* may apply to the *FCA* under section 138A of the *Act* to modify the application of ■ MIFIDPRU 2.4.8R(2)-■ (5), if it considers that a different *undertaking* should be deemed to be the *parent undertaking* on

the basis of *majority common management* for the purposes of ■ MIFIDPRU 2.5.

**Connected undertakings: significant influence without participation or capital ties**

2.4.10

**R**

- (1) This *rule* applies where:
  - (a) any of the following *undertakings* ("A") exercises significant influence over a *relevant financial undertaking*:
    - (i) a *MIFIDPRU investment firm*;
    - (ii) an *investment holding company*; or
    - (iii) a *mixed financial holding company*; and
  - (b) the *relevant financial undertaking* is not:
    - (i) a *subsidiary* of A; or
    - (ii) connected to A by *majority common management*.
- (2) Where this rule applies, A is deemed to be the *parent undertaking* of the *relevant financial undertaking* when applying ■ MIFIDPRU 2.5.

2.4.11

**G**

- (1) To assess whether A exercises significant influence over a *relevant financial undertaking*, the FCA considers that the equivalent accounting position, as it would be assessed under the guidance in International Accounting Standard 28 (as amended in 2011) under IFRS or Financial Reporting Standard 102 (March 2018) under UK GAAP, will be relevant. In particular, a *firm* should consider whether A has the power to participate in the financial and operating policy decisions of the *relevant financial undertaking*, even though A does not have control or joint control of those policies. The indicators in (2) may be evidence of significant influence but are not conclusive. A *firm* should consider all relevant facts and circumstances.
- (2) When applying ■ MIFIDPRU 2.4.10R(1)(a), the following circumstances may be indicators that A exercises significant influence over the *relevant financial undertaking*:
  - (a) A appoints or has the ability to appoint a representative in the *management body* of the *relevant financial undertaking*, either in the executive or in the supervisory function;
  - (b) A participates in the policy-making processes of the *relevant financial undertaking*, including participation in decisions about dividends and other distributions;
  - (c) the existence of material transactions between the two *undertakings*;
  - (d) the interchange of managerial personnel between the two *undertakings*;
  - (e) the provision of essential technical information or critical services from one entity to the other;
  - (f) A enjoys additional rights in the *relevant financial undertaking*, under a contract or a provision in the articles of association or other constitutional documents of the *relevant financial*

*undertaking*, that could affect the management or the decision-making of the *relevant financial undertaking*; and

- (g) the existence of share warrants, share call options, debt instruments that are convertible into ordinary shares or other similar instruments that are currently exercisable or convertible and have the potential, if exercised or converted, to give voting power or to reduce another party's voting power over the financial and operating policies of the *relevant financial undertaking*.

**Connected undertakings: single management other than pursuant to a contract, clauses in memoranda or articles of association**

2.4.12

**R**

- (1) This rule applies where:
  - (a) any of the following *undertakings* ("A") has been placed under single management, other than pursuant to a contract, clauses in memoranda or articles of association, with a *relevant financial undertaking*:
    - (i) a *MIFIDPRU investment firm*;
    - (ii) an *investment holding company*; or
    - (iii) a *mixed financial holding company*; and
  - (b) the *relevant financial undertaking* is not:
    - (i) a *subsidiary* of A;
    - (ii) connected to A by *majority common management*; or
    - (iii) an *undertaking* over which A exercises significant influence in accordance with ■ MIFIDPRU 2.4.10R.
- (2) If only one of the *undertakings* placed under single management already forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.
- (3) If both *undertakings* placed under single management form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.
- (4) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and both of those *undertakings* are *MIFIDPRU investment firms*, the *MIFIDPRU investment firm* with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other *MIFIDPRU investment firm* when applying the requirements in ■ MIFIDPRU 2.5.
- (5) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and only one of those *undertakings* is a *MIFIDPRU investment firm*, the *MIFIDPRU investment firm* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

**2.4.13** **G** When applying **■ MIFIDPRU 2.4.12R**, the following circumstances are indicators that the type of single management in **■ MIFIDPRU 2.4.12R(1)(a)** may exist:

- (1) A and the *relevant financial undertaking* are controlled by:
  - (a) the same natural person;
  - (b) the same group of natural persons;
  - (c) an *undertaking* or the same group of *undertakings* that do not otherwise belong to that *group*;
  - (d) an *undertaking* or the same group of *undertakings* that are not established in the UK; or
- (2) the majority of the management body, either in its executive or in its supervisory function, of A and the *relevant financial undertaking* is composed of people appointed by the same *undertaking* or *undertakings*, by the same natural person or by the same group of natural persons, even if they do not necessarily consist of the same people.

**2.4.14** **G** The indicators in **■ MIFIDPRU 2.4.13G** are not conclusive. Whether two or more *undertakings* are placed under single management for the purposes of **■ MIFIDPRU 2.4.12R** depends on whether in practice there is effective coordination of the financial and operating policies of the relevant *undertakings*. A firm should consider all relevant facts and circumstances.

**Connected undertakings: participations**

**2.4.15** **R**

- (1) This rule applies where the following conditions are met:
  - (a) one of the following (“A”) holds, directly or indirectly, a *participation* in a *relevant financial undertaking*:
    - (i) a MIFIDPRU investment firm;
    - (ii) an investment holding company; or
    - (iii) a mixed financial holding company;
  - (b) the *relevant financial undertaking* is not:
    - (i) a subsidiary of A; or
    - (ii) connected to A by majority common management; or
    - (iii) an *undertaking* over which A exercises significant influence in accordance with **■ MIFIDPRU 2.4.10R**; or
    - (iv) an *undertaking* with which A has been placed under single management in accordance with **■ MIFIDPRU 2.4.12R**; and
  - (c) A forms part of an existing investment firm group.
- (2) Where this rule applies, A is deemed to be the parent undertaking of the *relevant financial undertaking* when applying the requirements in **■ MIFIDPRU 2.5** or the group capital test in **■ MIFIDPRU 2.6**.

**2.4.16** **G** (1) An *undertaking* (“A”) holds a *participation* in a *relevant financial undertaking* where A has direct or indirect ownership of 20% or

more of the voting rights in, or capital of, a *relevant financial undertaking*.

- (2) However, A may also hold a *participation* where, even though A does not have an ownership interest as described in (1), A nonetheless has rights in the capital of the *relevant financial undertaking* which create a durable link with that *undertaking* which is intended to contribute to its activities.
- (3) For the purpose of assessing whether there is a *participation* of the type described in (2), it is relevant to consider the overall ownership structure of the *relevant financial undertaking*, having regard in particular to whether interests in the capital or voting rights of the *relevant financial undertaking* are distributed across a large number of shareholders, or whether A is the main investor.

### Application to apply the group capital test to an investment firm group

2.4.17

**R**

■ MIFIDPRU 2.6 applies, and ■ MIFIDPRU 2.5 does not apply, to an *investment firm group* where:

- (1) the *UK parent entity* of that *investment firm group* or a *MIFIDPRU investment firm* within that *investment firm group* has applied to the *FCA* in accordance with ■ MIFIDPRU 2.4.18R; and
- (2) the application in (1) demonstrates to the satisfaction of the *FCA* that:
  - (a) the group structure of the *investment firm group* is sufficiently simple to justify applying the *group capital test*; and
  - (b) there are no significant risks to *clients* or to the market stemming from the *investment firm group* as a whole that require supervision on a *consolidated basis*.

2.4.18

**R**

An application submitted under ■ MIFIDPRU 2.4.17R(1):

- (1) must be made using the form in ■ MIFIDPRU 2 Annex 2R, and should be submitted using the *online notification and application system*;
- (2) must include:
  - (a) a group structure chart that:
    - (i) identifies each *undertaking* that forms part of the *investment firm group*;
    - (ii) explains the nature of the business or activities of each *undertaking*;
    - (iii) identifies whether each *undertaking* is a *relevant financial undertaking* and, if so, which type of *relevant financial undertaking* it is; and
    - (iv) explains the nature and degree of ownership or control that connects the *undertaking* to the *investment firm group* (including any relationship that has led the *undertaking* to be classified as a *connected undertaking* in relation to the *investment firm group*);

- (b) an explanation of why the group structure is sufficiently simple to justify the application of the *group capital test*;
  - (c) an explanation of why there are no significant risks to *clients* or to the market stemming from the *investment firm group* that require supervision on a *consolidated basis*;
  - (d) calculations which show how each *parent undertaking* within the *investment firm group* would satisfy the *group capital test*;
  - (e) evidence that the book value of each *parent undertaking's* investment in each of the following is a fair reflection of the consideration paid by the *parent undertaking*:
    - (i) a *subsidiary*, whether that *subsidiary* forms part of the *investment firm group* or not; and
    - (ii) an entity that is a *connected undertaking* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R.
  - (f) calculations that demonstrate the consolidated *own funds* and *liquid assets* requirements that would apply on the basis of the *consolidated situation* of the *investment firm group* if consolidation under ■ MIFIDPRU 2.5 applied instead;
  - (g) an explanation of:
    - (i) how the *investment firm group* would comply with the consolidated requirements in (f) if the *FCA* did not grant permission to apply the *group capital test*; and
    - (ii) the timeframe in which the *investment firm group* would expect to achieve compliance with such consolidated requirements; and
  - (h) an explanation of how the *UK parent entity* of the *investment firm group*:
    - (i) would comply with the systems requirement in ■ MIFIDPRU 2.6.9R; or
    - (ii) would comply with the systems requirement in ■ MIFIDPRU 2.5.8R if the *FCA* did not grant permission to apply the *group capital test*.
- (3) must be submitted by a *UK parent entity* or a *MIFIDPRU investment firm* that has the necessary authority to make the application on behalf of all *undertakings* within the *investment firm group* that would be subject to the *group capital test*.

## 2.4.19

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In the *FCA's* view, where an *investment firm group* includes one or more undertakings that are *connected undertakings* (other than *connected undertakings* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R), that are material (either individually or in aggregate), it is unlikely that the *investment firm group* will be sufficiently simple to be able to apply the *group capital test*. This is because the relationship between the relevant member of the *investment firm group* and the *connected undertaking* is likely to be more complex and because the *group capital test* can only apply to holdings in instruments issued by, or claims on, an entity. Therefore, prudential consolidation under ■ MIFIDPRU 2.5 is likely to be more appropriate in such circumstances.

**Notifications relating to membership of a consolidation group or financial conglomerate**

2.4.20

**R**

- (1) A MIFIDPRU investment firm must notify the FCA immediately if the firm becomes aware that:
  - (a) it has become a member of an *investment firm group*;
  - (b) it has ceased to be a member of an *investment firm group*;
  - (c) there has been a change in the composition of an *investment firm group* of which that firm forms a part;
  - (d) it has become a member of a *financial conglomerate*; or
  - (e) it has ceased to be a member of a *financial conglomerate*.
- (2) A firm must:
  - (a) notify the FCA under (1) using the form in ■ MIFIDPRU 2 Annex 8R and submit it using the *online notification and application system*; and
  - (b) as part of the notification in (a):
    - (i) identify any entity that is becoming a member of the *investment firm group* or *financial conglomerate*;
    - (ii) identify any existing members of the *investment firm group* or *financial conglomerate* that continue to be members of that *investment firm group* or *financial conglomerate*;
    - (iii) identify any entity that is ceasing to be a member of the *investment firm group* or *financial conglomerate*; and
    - (iv) where applicable, confirm that the *investment firm group* or *financial conglomerate* has ceased to exist.
- (3) A firm ("X") is not required to notify the FCA under (1) if:
  - (a) another member of the relevant *investment firm group* or *financial conglomerate* ("Y") has notified the FCA under (1); and
  - (b) the notification submitted by Y includes information that accurately reflects X's relationship to the *investment firm group* or *financial conglomerate* and any other information required under (2)(b).

## 2.5 Prudential consolidation

- 2.5.1** **R** (1) This section applies to a *UK parent entity* that is not subject to the *group capital test* under ■ MIFIDPRU 2.6.
- (2) This section also applies to a *MIFIDPRU investment firm* that forms part of the same *investment firm group* as the relevant *UK parent entity* in (1).

**2.5.2** **G** Prudential consolidation under this section and the *group capital test* under ■ MIFIDPRU 2.6 are mutually exclusive requirements that may apply to an *investment firm group*. If an *investment firm group* is not permitted to use the *group capital test* under ■ MIFIDPRU 2.6, the consolidation requirements in this section will apply to that *investment firm group*, except to the extent that an exemption applies.

**2.5.3** **G** The table below is a guide to the content of this section.

Provisions of MIFIDPRU 2.5	Summary of content
MIFIDPRU 2.5.4G	The interaction between prudential consolidation under MIFIDPRU 2.5 and prudential consolidation under the <i>UK CRR</i>
MIFIDPRU 2.5.5G	The meaning of the <i>consolidated situation</i>
MIFIDPRU 2.5.6G	The treatment of <i>tied agents</i> included within the <i>consolidated situation</i>
MIFIDPRU 2.5.7R to MIFIDPRU 2.5.12G	The main requirements in relation to prudential consolidation under MIFIDPRU 2.5
MIFIDPRU 2.5.13R to MIFIDPRU 2.5.16G	The default position requiring full consolidation and the availability of alternative methods of consolidation
MIFIDPRU 2.5.17R and MIFIDPRU 2.5.18G	Proportional consolidation
MIFIDPRU 2.5.19R and MIFIDPRU 2.5.20R	Exemption from consolidated liquidity requirements
MIFIDPRU 2.5.21R and MIFIDPRU 2.5.22G	Determining whether a <i>UK parent entity</i> should be treated as an <i>SNI MIFIDPRU investment firm</i> on a <i>consolidated basis</i>
MIFIDPRU 2.5.23G	Determining consolidated <i>own funds</i>



Provisions of MIFIDPRU 2.5	Summary of content
MIFIDPRU 2.5.24G to MIFIDPRU 2.5.46R	Determining the consolidated <i>own funds requirement</i>
MIFIDPRU 2.5.47R and MIFIDPRU 2.5.48G [deleted]	Consolidated liquidity requirements [deleted]
MIFIDPRU 2.5.50G	Consolidated reporting requirements
MIFIDPRU 2.5.51	Consolidated governance requirements
MIFIDPRU 2.5.52	Application of the <i>ICARA process</i> on a group basis

**Interaction between consolidation under MIFIDPRU and the UK CRR**

2.5.4

G

- (1) Under this section, prudential consolidation applies where there is an *investment firm group*. The definition of an *investment firm group* excludes a group which contains a *UK credit institution* (except where the *credit institution* is a *connected undertaking*). Where a *group* includes a *UK credit institution*, prudential consolidation applies in accordance with the *UK CRR* and the *PRA Rulebook*.
- (2) However, a *group* may be an *investment firm group* where it contains both a *MIFIDPRU investment firm* and a *designated investment firm* subject to the *UK CRR*, but no *UK credit institution*. In this case, the *MIFIDPRU investment firm* would trigger prudential consolidation under this section and the *designated investment firm* would trigger consolidation under the *UK CRR*. Therefore, certain group structures may be subject to consolidation under both *MIFIDPRU* and the *UK CRR*, with the same entities included within the scope of consolidation of each. In this situation, the relevant *group* must comply with both sets of consolidated requirements, which are aimed at addressing different types of risks.

**Meaning of “consolidated situation”**

2.5.5

G

- (1) The application of prudential consolidation under this section is based on the *consolidated situation* of a *UK parent entity*.
- (2) A *consolidated situation* is defined as the situation that results from applying requirements in *MIFIDPRU* under ■ MIFIDPRU 2.5.7R and ■ MIFIDPRU 2.5.11R to a *UK parent entity*, as if it and the *relevant financial undertakings* in its *investment firm group*, form a single *MIFIDPRU investment firm*.
- (3) For the purposes of the *consolidated situation*, the term “*relevant financial undertaking*” and the underlying definitions of “*investment firm*”, “*financial institution*”, “*ancillary services undertaking*” and “*tied agent*” include *undertakings* established outside the *UK* that would satisfy those definitions if they were established in the *UK*.

**Tied agents included within the consolidated situation**

2.5.6

G

- (1) If a *tied agent* is included within the *consolidated situation*, all relevant activities and expenditure of that *tied agent* will be

consolidated in full (or, where proportional consolidation applies, the relevant proportion of the activities of that *tied agent* will be consolidated) for the purpose of calculating the consolidated *fixed overheads requirement* and the consolidated *K-factor requirement*. This applies whether the *tied agent* carries out *investment services and/or activities* or incurs relevant expenses on behalf of another entity within the *consolidated situation* or on behalf of a third party.

(2) The *guidance* in (1) relates to a *tied agent* that is included within the *consolidated situation*. There are separate requirements in:

- (a) ■ MIFIDPRU 4.5.6R, which applies in relation to the individual *fixed overheads requirement* of a *MIFIDPRU investment firm* where a *tied agent* incurs expenses on behalf of that *firm*; and
- (b) ■ MIFIDPRU 4.7.2R, ■ MIFIDPRU 4.8.3R, ■ MIFIDPRU 4.9.2R or ■ MIFIDPRU 4.10.2R, which apply in relation to the individual *K-factor requirement* of a *MIFIDPRU investment firm* where a *tied agent* carries on certain *investment services and/or activities* on behalf of that *firm*.

These requirements apply in relation to the calculation of the individual *fixed overheads requirement* and *K-factor requirement* of a *MIFIDPRU investment firm*, even if the *tied agent* is not part of the same *investment firm group* as that *MIFIDPRU investment firm*. Where ■ MIFIDPRU 4 applies on a *consolidated basis*, those requirements will also be relevant to any activities carried on by *tied agents* on behalf of a *third country investment firm* included within the *consolidated situation*.

(3) Where the requirements in (2)(a) or (2)(b) apply in relation to a *MIFIDPRU investment firm* or a *third country investment firm* that is included within the *consolidated situation*, the relevant amounts that are added to the individual requirements of that *MIFIDPRU investment firm* or *third country investment firm* due to the activities of the *tied agent* must be included in the *consolidated situation*, irrespective of whether the *tied agent* is itself included within the *consolidated situation*.

(4) An individual *tied agent* ("A") may both:

- (a) be included within the *consolidated situation*; and
- (b) incur expenses or carry on *investment services and/or activities* on behalf of a *MIFIDPRU investment firm* or *third country investment firm* ("B") where B is also included in the *consolidated situation*.

In this case, the contribution of A to the consolidated *fixed overheads requirement* and consolidated *K-factor requirement* may be adjusted to prevent double-counting of any amounts due to B being included in the *consolidated situation* and a proportion of A's activities or expenses having already been attributed to B.

### Prudential consolidation – main requirements

#### 2.5.7



A UK parent entity must comply with the following on the basis of its *consolidated situation*:

- (1) ■ MIFIDPRU 3 (Own funds);

- (2) ■ MIFIDPRU 4 (Own funds requirements);
- (3) ■ MIFIDPRU 5 (Concentration risk);
- (4) [deleted]
- (5) ■ MIFIDPRU 9 (Reporting).

**2.5.8** **R** To ensure that the data required to comply with the consolidated requirements under ■ MIFIDPRU 2.5.7R are duly processed and forwarded, a *UK parent entity* to which ■ MIFIDPRU 2.5.7R applies and any *MIFIDPRU investment firm* in the same *investment firm group* must establish the following:

- (1) a proper organisational structure; and
- (2) appropriate internal control mechanisms.

**2.5.9** **R** A *UK parent entity* to which ■ MIFIDPRU 2.5.7R applies and any *MIFIDPRU investment firm* in the same *investment firm group* must each ensure that any of their *subsidiaries* that are not subject to *MIFIDPRU* implement the necessary arrangements, processes and mechanisms to ensure that the *UK parent entity* complies with the consolidated requirements under ■ MIFIDPRU 2.5.7R.

**2.5.10** **R**

- (1) When applying ■ MIFIDPRU 3 on a *consolidated basis*, the requirements in Title II of Part Two of the *UK CRR* shall also apply with the modifications in this *rule*.
- (2) A reference in Title II of Part Two of the *UK CRR* to an entity or person included within the “consolidation pursuant to Chapter 2 of Title II of Part One” is a reference to an entity or person included in the *consolidated situation* of the *investment firm group* under ■ MIFIDPRU 2.5.
- (3) The relevant *subsidiaries* for the purposes of articles 81(1)(a) and 82(a) of the *UK CRR* are:
  - (a) a *MIFIDPRU investment firm*;
  - (b) a *designated investment firm*; and
  - (c) a *UK credit institution* that is included in the *consolidated situation* under ■ MIFIDPRU 2.5 because it is a *connected undertaking*.
- (4) The modifications in (5) apply where the following provisions of the *UK CRR* apply to a *subsidiary* that is a *MIFIDPRU investment firm*:
  - (a) article 84(1)(a)(i);
  - (b) article 85(1)(a)(i); and
  - (c) article 87(1)(a)(i).
- (5) The modifications referred to in (4) are as follows:

- (a) the relevant amount of *common equity tier 1 capital* in article 84(1)(a)(i) is the sum of:
    - (i) the amount of *common equity tier 1 capital* required to meet the *firm's own funds threshold requirement*; and
    - (ii) any other requirements that apply to the *firm* under additional *third countries* local supervisory regulations in to the extent that those requirements must be met by *common equity tier 1 capital*;
  - (b) the relevant amount of *tier 1 capital* in article 85(1)(a)(i) is the sum of:
    - (i) the amount of *tier 1 capital* required to meet the *firm's own funds threshold requirement*; and
    - (ii) any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and
  - (c) the relevant amount of *own funds* in article 87(1)(a)(i) is the sum of:
    - (i) the amount of *own funds* required to meet the *firm's own funds threshold requirement*; and
    - (ii) any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *own funds*.
- (6) The following provisions of the *UK CRR* are modified as follows:
- (a) article 84(1)(a)(ii) applies as if it refers to the sum of:
    - (i) the amount of consolidated *common equity tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in ■ MIFIDPRU 2.5; and
    - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *common equity tier 1 capital*;
  - (b) article 85(1)(a)(ii) applies as if it refers to the sum of:
    - (i) the amount of consolidated *tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in ■ MIFIDPRU 2.5; and
    - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and
  - (c) article 87(1)(a)(ii) applies as if it refers to the sum of:
    - (i) the amount of consolidated *own funds* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in ■ MIFIDPRU 2.5; and
    - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to

the extent that those requirements must be met by *own funds*.

2.5.10A **G** ■ MIFIDPRU 3 Annex 7.57G and ■ MIFIDPRU 3 Annex 7.58R contain supplementary provisions that may be relevant when a *firm* is applying ■ MIFIDPRU 2.5.10R.

2.5.11 **R** A *UK parent entity* must comply with ■ MIFIDPRU 6 (Liquidity) on the basis of its *consolidated situation*.

2.5.12 **G** ■ MIFIDPRU 2.5.7R to ■ MIFIDPRU 2.5.11R require a *UK parent entity* to comply with other chapters of *MIFIDPRU* on the basis of its *consolidated situation*. Certain requirements in those chapters do not apply, or apply in a modified manner, to *SNI MIFIDPRU investment firms*. ■ MIFIDPRU 2.5.21R explains how the *UK parent entity* should determine whether it should be treated as an *SNI MIFIDPRU investment firm* on the basis of its *consolidated situation*.

**Default position: full consolidation of relevant entities**

2.5.13 **R**

- (1) For the purposes of determining the *consolidated situation* under ■ MIFIDPRU 2.5.7R and ■ MIFIDPRU 2.5.11R, a *UK parent entity* must carry out a full consolidation of all *relevant financial undertakings* that form part of its *investment firm group*, unless (2) applies.
- (2) A *UK parent entity* is not required to carry out a full consolidation of a *relevant financial undertaking* under (1) where:
  - (a) the *relevant financial undertaking* is a *connected undertaking* that forms part of the *investment firm group* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R; and
  - (b) the conditions for proportional consolidation under ■ MIFIDPRU 2.5.17R are satisfied.

2.5.14 **G** A *UK parent entity* that is subject to ■ MIFIDPRU 2.5.13R(1) may apply to the *FCA* under section 138A of the Act to modify the application of ■ MIFIDPRU 2.5.13R(1) to require an alternative method of consolidation.

2.5.15 **G** When the *FCA* considers an application described in ■ MIFIDPRU 2.5.14G, it will consider a range of factors, including whether full consolidation is appropriate because the *UK parent entity* or a *MIFIDPRU investment firm* within the same *investment firm group*:

- (1) acts as sponsor by managing or advising the *relevant financial undertaking* or marketing its securities;
- (2) provides liquidity or credit enhancements to the *relevant financial undertaking*;
- (3) is an important investor in the equity or debt instruments of the *relevant financial undertaking*;
- (4) through contractual or non-contractual relationships, is exposed to risks or equity-like returns that are derived from the assets of the

*relevant financial undertaking* or that are dependent upon the performance of that *undertaking*;

- (5) is effectively involved in the decision-making process of the *relevant financial undertaking* or exercises influence over that *undertaking*;
- (6) receives critical operational services from the *relevant financial undertaking* which cannot be replaced in a timely fashion without excessive cost;
- (7) has a credit rating upon which the credit rating of the *relevant financial undertaking* is based;
- (8) has a close commercial relationship with other investors in the *relevant financial undertaking*;
- (9) has a common customer base with the *relevant financial undertaking* or is involved in the commercialisation of its products;
- (10) is part of the same brand as the *relevant financial undertaking*;
- (11) has already provided financial support to the *relevant financial undertaking* in relation to financial difficulties; or
- (12) incurs a disproportionate amount of the expenses connected with the business operations of the *relevant financial undertaking*.

2.5.16

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The FCA would generally expect that the alternative method of consolidation proposed in an application described in ■ MIFIDPRU 2.5.14G would involve either:

- (1) proportional consolidation according to the share of the capital or voting rights held in the *relevant financial undertaking*, in which case the FCA will take into account factors equivalent to those set out in ■ MIFIDPRU 2.5.17R(2) in addition to the factors in ■ MIFIDPRU 2.5.15G; or
- (2) consolidation of an appropriate alternative fixed percentage of the relevant metrics attributable to the *relevant financial undertaking*.

**Proportional consolidation: participations**

2.5.17

R

- (1) This *rule* applies where a *relevant financial undertaking* forms part of an *investment firm group* because it is a *connected undertaking* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R.
- (2) For the purposes of determining the consolidated situation under ■ MIFIDPRU 2.5.7R and ■ MIFIDPRU 2.5.11R, a *UK parent entity* (“A”) may apply proportional consolidation in relation to the *relevant financial undertaking* in (1) (“B”) if the following conditions are met:
  - (a) A’s liability is limited to the share of capital that it holds in B;
  - (b) the liability of the other shareholders or members of B (“participating undertakings”) is clearly established by a legally binding and enforceable contract between A and all participating undertakings which:

- (i) limits the liability of each party to the percentage of its shareholding;
- (ii) clearly states that any potential losses arising from B will be borne by all shareholders or members proportionately to the share of capital held by each of them at such point in time;
- (iii) states that any change in the share of capital of a shareholder or member is subject to the explicit consent of all the shareholders or members;
- (iv) states that if B is recapitalised, A will inform the *FCA* in a timely manner about the progress of the recapitalisation process and that each shareholder or member is liable to contribute to the recapitalisation no more than an amount that is proportionate to its current share of capital held in A;
- (c) there are no other agreements or arrangements between any of the following that would override or undermine any of the conditions in (b);
  - (i) some or all of the participating undertakings; or
  - (ii) some or all of the participating undertakings and one or more third parties;
- (d) any participating undertakings who do not form part of the same *investment firm group* as A either:
  - (i) are subject to prudential supervision; or
  - (ii) can reasonably be expected to have sufficient resources to fund any contribution for which they may be liable under (b)(iv);
- (e) the solvency of the participating undertakings is satisfactory and can be expected to remain satisfactory;
- (f) the *UK parent entity* has notified the *FCA* in advance that it intends to apply proportional consolidation in relation to B; and
- (g) the notification in (f) has been made using the form in [MIFIDPRU 2 Annex 3R](#) and submitted using the *online notification and application system*.

**2.5.18** **G** Proportional consolidation allows a *UK parent entity* to include within its *consolidated situation* only a proportion of the relevant metrics associated with the *relevant financial undertaking* to which it is connected by a *participation*. The relevant proportion is equal to the proportion of capital or voting rights that comprises that *participation*.

**Exemption from consolidated liquidity requirements**.....

**2.5.19** **R** A *UK parent entity* is exempt from [MIFIDPRU 2.5.11R](#) if:

- (1) the *UK parent entity* has applied to the *FCA* in accordance with [MIFIDPRU 2.5.20R](#); and
- (2) the application in (1) demonstrates the following to the satisfaction of the *FCA*:

- (a) all *MIFIDPRU investment firms* in the *investment firm group* are subject to the rules in ■ MIFIDPRU 6 (Liquidity) on an individual basis; and
- (b) the exemption is appropriate, taking into account the nature, scale and complexity of the *investment firm group*.

2.5.20 **R** A *UK parent entity* must make an application under ■ MIFIDPRU 2.5.19R(1) by completing the form in ■ MIFIDPRU 2 Annex 4R and submitting it using the *online notification and application system*.

**Application of conditions for classification as an SNI MIFIDPRU investment firm on a consolidated basis**

- 2.5.21 **R**
- (1) This rule applies for the purpose of determining whether a *UK parent entity* should be treated as an *SNI MIFIDPRU investment firm* when applying the chapters of *MIFIDPRU* specified in ■ MIFIDPRU 2.5.7R and ■ MIFIDPRU 2.5.11R on a consolidated basis.
  - (2) Where any individual *MIFIDPRU investment firm* within the *investment firm group* has been classified as a *non-SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 1.2 (including on a combined basis under ■ MIFIDPRU 1.2.10R), the *UK parent entity* in (1) must comply with the relevant chapters of *MIFIDPRU* that apply on a consolidated basis as if it were a *non-SNI MIFIDPRU investment firm*.
  - (3) Where no individual *MIFIDPRU investment firm* within the *investment firm group* has been classified as a *non-SNI MIFIDPRU investment firm* (including on a combined basis under ■ MIFIDPRU 1.2.10R), the *UK parent entity* in (1) must apply the criteria and comply with the calculation requirements in ■ MIFIDPRU 1.2 on the basis of the *consolidated situation*.
  - (4) When applying the criteria in ■ MIFIDPRU 1.2 in accordance with (3), if any entity included within the *consolidated situation* is *dealing on own account*, the *UK parent entity* in (1) must comply with the relevant chapters of *MIFIDPRU* that apply on a *consolidated basis* as if it were a *non-SNI MIFIDPRU investment firm*.
  - (5) For the purposes of (3), when calculating the contribution of a *collective portfolio management investment firm* to the *consolidated situation*, the *UK parent entity* is required to include only amounts that are attributable to the *investment services and/or activities* carried on by the *collective portfolio management investment firm*.

- 2.5.22 **G**
- (1) ■ MIFIDPRU 2.5.21R(3) requires the relevant *UK parent entity* to consolidate all of the relevant metrics for the criteria in ■ MIFIDPRU 1.2.1R.
  - (2) This is separate from the application of only certain metrics (*AUM, COH*, the on- and off-balance sheet total and the total annual gross revenue) on a combined basis to an individual *MIFIDPRU investment firm* under ■ MIFIDPRU 1.2.10R.
  - (3) If any of the thresholds in ■ MIFIDPRU 1.2.1R are exceeded on a *consolidated basis*, the relevant chapters of *MIFIDPRU* specified in



■ MIFIDPRU 2.5.7R and ■ MIFIDPRU 2.5.11R apply to the *UK parent entity* as if it were a *non-SNI MIFIDPRU investment firm*. However, if none of the thresholds in ■ MIFIDPRU 1.2.1R are exceeded on a *consolidated basis*, the relevant chapters of *MIFIDPRU* that apply on a *consolidated basis* apply to the *UK parent entity* as if it were an *SNI MIFIDPRU investment firm*.

- (4) When calculating whether the thresholds in ■ MIFIDPRU 1.2.1R are exceeded on a *consolidated basis*, ■ MIFIDPRU 2.5.21R(5) permits a *UK parent entity* to exclude amounts that relate to its *non-MiFID business*. However, a *UK parent entity* should not apply this approach to the calculation of the consolidated on- and off-balance sheet total for the purposes of ■ MIFIDPRU 1.2.1R(6). This is because the *FCA* does not consider that it is reasonable to subdivide a *collective portfolio management investment firm's* balance sheet in this way. Therefore, a *UK parent entity* should include the full on- and off-balance sheet total of a *collective portfolio management investment firm* in the consolidated total for these purposes.

**Prudential consolidation in practice: own funds**

2.5.23

G

- (1) Where ■ MIFIDPRU 3 applies on a *consolidated basis*, the total consolidated *own funds requirement* of an *investment firm group* must be met by consolidated *own funds*. Consolidated *own funds* must satisfy the requirements of ■ MIFIDPRU 3 and the deductions from consolidated *own funds* must be applied in accordance with that chapter as it applies on a *consolidated basis*.
- (2) ■ MIFIDPRU 2.5.10R applies the provisions on minority interests and *additional tier 1 instruments* and *tier 2 instruments* issued by *subsidiaries* in Title II of Part Two of the *UK CRR* to a *UK parent entity*, but with the modifications set out in that *rule*.
- (3) The determination of consolidated *own funds* should be consistent with any reporting of consolidated financial statements that the *FCA* may require. Under section 165(6) and (7) of the *Act*, the *FCA* may require a *UK parent entity* to provide independent verification of the calculation of its consolidated *own funds*.

**General**

2.5.24

G

- (1) Generally, the same approach to *own funds requirements* that applies to a *MIFIDPRU investment firm* on an individual basis under ■ MIFIDPRU 4 applies to a *UK parent entity* on a *consolidated basis*.
- (2) Where ■ MIFIDPRU 4 applies on a *consolidated basis*, the consolidated *own funds requirement* is the highest of the components of the *own funds requirement* specified in ■ MIFIDPRU 4.3 as they apply on a *consolidated basis* – i.e. the highest of:
- (a) the consolidated *fixed overheads requirement*;
  - (b) the consolidated *permanent minimum capital requirement*; or
  - (c) the consolidated *K-factor requirement* if the *UK parent entity* is treated as a *non-SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 2.5.21R.

**Consolidated fixed overheads requirement**

2.5.25

**R**

- (1) This rule applies for the purposes of a *UK parent entity's* calculation of the *fixed overheads requirement* on a *consolidated basis*.
- (2) A *UK parent entity* must:
  - (a) use figures arising from its most recent:
    - (i) audited consolidated *annual financial statements* after distribution of profits; or
    - (ii) unaudited consolidated *annual financial statements*, where audited financial statements are not available;
  - (b) if the relevant figures under (a) are not available, calculate the consolidated fixed overheads as the sum of the following:
    - (i) the individual fixed overheads of the *UK parent entity*;
    - (ii) the full amount of the individual fixed overheads of each *relevant financial undertaking* that is fully consolidated within the *consolidated situation*; and
    - (iii) the relevant proportion of the individual fixed overheads of each *relevant financial undertaking* that is subject to proportional consolidation on a *consolidated basis*.
  - (c) Where the relevant figures under (2)(a) are available, but the consolidated *annual financial statements* include *undertakings* that are not members of the *investment firm group*, a *UK parent entity* may use the approach in (2)(b) to calculate its *fixed overheads requirement* on a *consolidated basis*.
- (3) Where these amounts are not already included in the relevant figures under (2), a *UK parent entity* must include within its calculation of the consolidated fixed overheads any fixed expenses incurred by a third party, including a *tied agent*, on behalf of:
  - (a) the *UK parent entity*; or
  - (b) any *relevant financial undertaking* included in the *consolidated situation*.
- (4) Where the figures under (2)(b) include expenses that are incurred between entities included in the *consolidated situation*, the *UK parent entity* may adjust the consolidated fixed overheads figure to avoid double-counting of these amounts.

2.5.26

**G**

Where the *FCA* considers that there has been a material change in the activities of the *investment firm group*, the *FCA* may use its powers under section 55L or section 143K of the *Act* to require a *UK parent entity* to use an appropriate adjusted figure as the consolidated *fixed overheads requirement*.

**Consolidated permanent minimum capital requirement**

2.5.27

**R**

- (1) This rule applies for the purposes of a *UK parent entity's* calculation of the consolidated *permanent minimum capital requirement* when **■** MIFIDPRU 4 applies on a *consolidated basis*.
- (2) The consolidated *permanent minimum capital requirement* is the sum of the following:
  - (a) for entities that are fully consolidated within the *consolidated situation*, the full amount of each of the following:

- (i) the individual *permanent minimum capital requirement* of each *MIFIDPRU investment firm*; and
  - (ii) where applicable, the base own funds requirement or initial capital requirement of any other *relevant financial undertaking*; and
- (b) for entities that are subject to proportional consolidation under the *consolidated situation*, the relevant proportion of each of the amounts specified in (a).
- (3) For the purposes of (2):
- (a) references to a *MIFIDPRU investment firm* include a *third country* entity within the *investment firm group* that would satisfy the definition if it were established in the *UK*; and
  - (b) the individual *permanent minimum capital requirement*, base own funds requirement or initial capital requirement of any *third country* entity in (a) is the individual requirement that would apply if that entity were established in the *UK*.

### Consolidated K-Factor Requirement

2.5.28

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- (1) The general principle is that the consolidated *K-factor requirement* should be calculated on the basis of the *consolidated situation* of a *UK parent entity*, so that the entities included in the *consolidated situation* are treated as if they form a single *MIFIDPRU investment firm*. This is subject to any rules in this section which require a modified approach to the relevant calculation on a *consolidated basis*.
- (2) As is the case when calculating the *K-factor requirement* on an individual basis, the *K-factor metrics* that are relevant to the *consolidated situation* depend on the *investment services and/or activities* (or equivalent activities in the case of a *third country* entity) carried on by relevant entities within the *investment firm group*. The consolidated *K-factor requirement* should be calculated in accordance with ■ MIFIDPRU 4, but on the basis of the *consolidated situation*.
- (3) ■ MIFIDPRU 2.5.6G contains additional *guidance* on how the consolidated *K-factor requirement* applies in relation to *tied agents* that are included within the *consolidated situation*.

### Consolidated K-AUM, K-COH and K-DTF requirements

2.5.29

R

- (1) This *rule* applies for the purposes of a *UK parent entity's* calculation on a *consolidated basis* of the following:
  - () the *K-AUM requirement*;
  - () the *K-COH requirement*; and
  - () the *K-DTF requirement*.
- (2) Subject to (4), the consolidated *AUM*, *COH* or *DTF* for the purposes of (1) is the sum of the following:
  - (a) the full amount of the relevant individual *K-factor metrics* of each *MIFIDPRU investment firm* that is fully consolidated within the *consolidated situation*; and

(b) the relevant proportion of the relevant individual *K-factor metrics* of each *MIFIDPRU investment firm* that is subject to proportional consolidation on a *consolidated basis*.

(3) For the purposes of (2):

references to a *MIFIDPRU investment firm* include a *third country* entity within the *investment firm group* that would satisfy that definition if it were established in the *UK*; and

the relevant individual *K-factor metric* of any *third country* entity in (a) is the individual *K-factor metric* that would be attributable to that entity if that entity were established in the *UK*.

Where the consolidated *AUM*, *COH* or *DTF* under (2) includes amounts attributable to transactions or arrangements solely between two or more entities included within the *consolidated situation*, those amounts are excluded when calculating the consolidated *AUM*, *COH* or *DTF*.

2.5.29A

G

(1) As the exclusion in ■ MIFIDPRU 2.5.29R(4) applies only to transactions or arrangements solely between two or more entities included within the *consolidated situation* of an *investment firm group*, it does not apply to transactions or arrangements involving counterparties or *clients* outside that *consolidated situation*. This is illustrated by the example in (2).

(2) Firm A and Firm B are part of the *consolidated situation* of an *investment firm group*. Firm A delegates management of assets to Firm B. If the assets delegated by Firm A are beneficially owned by a *client* outside the *consolidated situation*, such assets would not benefit from the exclusion under ■ MIFIDPRU 2.5.29R(4) for the purposes of the *UK parent entity's* calculation of consolidated *AUM*.

**Consolidated K-CMH and K-ASA requirements**

2.5.30

R

The consolidated *K-CMH requirement* and consolidated *K-ASA requirement* for an *investment firm group* must be calculated in accordance with the following:

(1) the contribution of any individual *MIFIDPRU investment firm* to the *consolidated situation* must be determined by applying the *rules* for calculating *CMH* and *ASA* in ■ MIFIDPRU 4.8 and ■ MIFIDPRU 4.9 to that individual *firm*; and

(2) the contribution of any other entity ("*X*") in the *investment firm group* to the *consolidated situation* must be determined by:

(a) identifying whether, in the course of, or in connection with, business which would be *MiFID business* if it were carried on by a *MIFIDPRU investment firm* in the *UK*, *X* holds:

- (i) any *money* that was received from its *clients*; or
- (ii) any assets belonging to its *clients*;

(b) subject to (3), applying the calculation *rules* in ■ MIFIDPRU 4.8 or ■ 4.9 to the amounts in (a) by treating:

- (i) the amounts identified in (a)(i) as *CMH*;

- (ii) the amounts identified in (a)(ii) as *ASA*;
- (c) where an amount under (a) was originally received by X from a client in the form of money but has subsequently been placed in a collective investment undertaking to meet segregation requirements, treating the relevant amount as:
  - (i) *ASA* if, on the insolvency of X, the relevant client would be considered to have a direct proprietary interest in the relevant units, *shares* or equivalent interests in the collective investment undertaking; or
  - (ii) *CMH* in any other circumstance.
- (3) when applying the calculation *rules* in ■ MIFIDPRU 4.8, an arrangement operated by X in relation to client money is a *segregated account* only if (ignoring ■ MIFIDPRU 4.8.9E, which does not apply for these purposes) it meets the requirements in ■ MIFIDPRU 4.8.8R.

2.5.31 **R** Where the *UK parent entity* of the *investment firm group* has been unable to ascertain whether:

- (1) the money or assets referred to in ■ MIFIDPRU 2.5.30R(2)(a) were received or are held in the course of, or in connection with, business which would be *MiFID business* if it were carried on by a *MIFIDPRU investment firm* in the *UK*, it must treat the amounts as if they were received or are held in connection with such business;
- (2) any amount treated as *CMH* held by X under ■ MIFIDPRU 2.5.30R(2) is held in an account which meets the requirements to be classified as a *segregated account*, it must treat the relevant amount as held in a *non-segregated account*; and
- (3) a client would be considered to have a direct proprietary interest in a *unit, share* or equivalent interest in a collective investment undertaking on the insolvency of X for the purposes of ■ MIFIDPRU 2.5.30R(2)(c), it must treat the relevant amount as *CMH*.

**Consolidated K-NPR and K-CMG requirements**

2.5.32 **R** A *UK parent entity* must apply the relevant provisions for the calculation of the *K-NPR requirement* in ■ MIFIDPRU 4 to a position or exposure included in the *consolidated situation* unless a *rule* in this section:

- (1) permits the *UK parent entity* to include that position or exposure within the calculation of the consolidated *K-CMG requirement*; or
- (2) otherwise permits the position or exposure to be excluded from the calculation of the consolidated *K-NPR requirement*.

2.5.33 **G** For the *K-NPR requirement* there is no coefficient in ■ MIFIDPRU 4. The requirement is instead based upon the concept of positions and exposures.

2.5.34 **R** (1) This *rule* applies to a *UK parent entity* when calculating the *K-NPR requirement* on a *consolidated basis*.

- (2) The *UK parent entity* may only use positions in one *undertaking* to offset positions in another *undertaking* if it has obtained permission to do so in accordance with (3).
- (3) The permission in (2) will only be granted where:
  - (a) the *UK parent entity* has applied to the *FCA* in accordance with (4); and
  - (b) the application demonstrates to the satisfaction of the *FCA* that the conditions in article 325b of the *UK CRR* are met.
- (4) An entity that applies for a permission under (3) must complete the form in ■ MIFIDPRU 2 Annex 5R and submit it using the *online notification and application system*.

**2.5.35** G The effect of ■ MIFIDPRU 2.5.34R is that there is no automatic offsetting of positions held by different *undertakings* within an *investment firm group* for the purposes of applying the *K-NPR requirement* on a *consolidated basis*. If a *UK parent entity* has not obtained permission under ■ MIFIDPRU 2.5.34R, it must include all positions held by the relevant *undertakings* within the *investment firm group* within its calculation of the consolidated *K-NPR requirement* without netting such positions.

**2.5.36** G

- (1) ■ MIFIDPRU 2.5.37R to ■ MIFIDPRU 2.5.42R explain the circumstances in which a *UK parent entity* may calculate a *K-CMG requirement* when applying ■ MIFIDPRU 4 on a *consolidated basis*. Where a *UK parent entity* is not permitted to calculate a *K-CMG requirement* in relation to a relevant position included within its *consolidated situation*, it must include that position within its calculation of the consolidated *K-NPR requirement*.
- (2) ■ MIFIDPRU 4.13 permits a *MIFIDPRU investment firm* on an individual basis to calculate a *K-CMG requirement* for a portfolio in trading book if it has obtained a *K-CMG permission* from the *FCA*. A *MIFIDPRU investment firm* must calculate a *K-NPR requirement* in relation to all other *trading book* positions, and positions other than *trading book* positions where those positions give rise to foreign exchange risk or commodity risk. These positions must be included within the calculation of the *consolidated K-NPR requirement*.

**2.5.37** R When applying ■ MIFIDPRU 4 on a *consolidated basis*, a *UK parent entity* may calculate a consolidated *K-CMG requirement* in relation to portfolios that form part of its *consolidated situation* in accordance with ■ MIFIDPRU 2.5.38R to ■ MIFIDPRU 2.5.42R.

**2.5.38** R

- (1) This *rule* applies where a *MIFIDPRU investment firm*:
  - (a) is included within the *consolidated situation* of a *UK parent entity*; and
  - (b) has been granted a *K-CMG permission* in relation to a *portfolio* on an individual basis.

- (2) Where this rule applies, the *UK parent entity* may include the *portfolio* in (1)(b) within its calculation of the consolidated *K-CMG requirement* without requiring a further *K-CMG permission*.

2.5.39

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■ MIFIDPRU 2.5.38R sets out the only circumstance in which a *UK parent entity* can include a *portfolio* of a *MIFIDPRU investment firm* within the calculation of the consolidated *K-CMG requirement*. Unlike for *designated investment firms* under ■ MIFIDPRU 2.5.40R and third country entities under ■ MIFIDPRU 2.5.41R, it is not possible to make a separate application to calculate a *K-CMG requirement* in relation to that *portfolio* only on a *consolidated basis*. This reflects the *FCA's* view that the choice of whether to calculate a *K-NPR requirement* or a *K-CMG requirement* in relation to a specific *portfolio* must be applied consistently on both an individual and consolidated level.

2.5.40

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- (1) This *rule* applies where a *designated investment firm* ("A") is included within the *consolidated situation* of a *UK parent entity*.
- (2) A *UK parent entity* may include a *portfolio* of A within the calculation of the *UK parent entity's* consolidated *K-CMG requirement* if:
- (a) the *UK parent entity*, or a *MIFIDPRU investment firm* within the same *investment firm group*, has applied to the *FCA* in accordance with ■ MIFIDPRU 2.5.42R; and
  - (b) the application demonstrates to the satisfaction of the *FCA* that A satisfies the requirements in ■ MIFIDPRU 4.13 as modified by (3) to obtain a *K-CMG permission* in respect of the *portfolio* on an individual basis.
- (3) For the purposes of (2), the following modifications apply to the rules relating to the calculation of the *K-CMG requirement* in ■ MIFIDPRU 4.13:
- (a) a reference to the "*MIFIDPRU investment firm*" or "*firm*" is a reference to A;
  - (b) the clearing member in ■ MIFIDPRU 4.13.9R(2)(c) may be one of the following:
    - (i) A itself;
    - (ii) another *designated investment firm*;
    - (iii) a *MIFIDPRU investment firm*;
    - (iv) a *third country investment firm*;
    - (v) a *UK credit institution*; or
    - (vi) a *credit institution* established in a *third country*.
  - (c) the reference in ■ MIFIDPRU 4.13.12R to ■ MIFIDPRU 4.13.9R is a reference to ■ MIFIDPRU 4.13.9R as modified by this *rule*; and
  - (d) the requirement in ■ MIFIDPRU 4.13.13R(1)(b) does not apply, but A must ensure that its ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed take into account the understanding of relevant *individuals* within A of the margin model for the purposes of considering whether:

2.5.41

**R**

- (i) the resulting consolidated *K-CMG requirement* for the portfolio(s) is sufficient to cover the relevant risks to which A is exposed; and
- (ii) the *K-CMG permission* remains appropriate in relation to the portfolio(s) in respect of which it was granted.

- (1) This rule applies where a *third country* entity ("B") is included within the *consolidated situation* of a *UK parent entity*.
- (2) A *UK parent entity* may include a portfolio of B within the calculation of the *UK parent entity's* consolidated *K-CMG requirement* if:
  - (a) the *UK parent entity*, or a *MIFIDPRU investment firm* within the same *investment firm group*, has applied to the *FCA* in accordance with ■ MIFIDPRU 2.5.42R; and
  - (b) the application demonstrates to the satisfaction of the *FCA* that B satisfies the requirements in ■ MIFIDPRU 4.13 as modified by (3) to obtain a *K-CMG permission* in respect of the portfolio on an individual basis.
- (3) For the purposes of (2), the following modifications apply to the rules relating to the calculation of the *K-CMG requirement* in ■ MIFIDPRU 4.13:
  - (a) a reference to the "*MIFIDPRU investment firm*" or "*firm*" is a reference to B;
  - (b) the *clearing member* for the purposes of ■ MIFIDPRU 4.13.9R(2)(c) may be any of the following:
    - (i) an entity listed in ■ MIFIDPRU 4.13.9R(2)(c);
    - (ii) another entity that the application in (2)(a) demonstrates is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates; or
    - (iii) B itself, provided that the application demonstrates that B satisfies the conditions in (ii);
  - (c) a reference to the "*clearing member*" is a reference to the *clearing member* in (b);
  - (d) the reference in ■ MIFIDPRU 4.13.12R to:
    - (i) ■ MIFIDPRU 4.13.9R is a reference to ■ MIFIDPRU 4.13.9R as modified by this rule; and
    - (ii) both the *clearing member* and *client* of the *clearing member* being entities listed in ■ MIFIDPRU 4.13.9R(2)(c) is to both of those entities being entities listed in (b)(i) or (b)(ii);
  - (e) the obligation in ■ MIFIDPRU 4.13.13R(1)(b) does not apply, but B must ensure that its ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed incorporate the understanding of relevant *individuals* within B of the margin model for the purposes of considering whether:
    - (i) the resulting consolidated *K-CMG requirement* for the portfolio(s) is sufficient to cover the relevant risks to which B is exposed; and



(ii) the *K-CMG permission* remains appropriate in relation to the *portfolio(s)* in respect of which it was granted.

2.5.42

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- (1) A *UK parent entity* or a *MIFIDPRU investment firm* within the same *investment firm group* that wishes to apply for a *K-CMG permission* in relation to one or more *portfolios* included in the *consolidated situation* of its *investment firm group* must complete the application form in ■ MIFIDPRU 2 Annex 6R or ■ MIFIDPRU Annex 7R and submit it using the *online notification and application system*.
- (2) A single application under (1) may be made in respect of multiple portfolios of multiple entities referenced in ■ MIFIDPRU 2.5.40R or ■ MIFIDPRU 2.5.41R, provided that the application demonstrates to the FCA how the relevant conditions in ■ MIFIDPRU 4.13.9R (as modified by ■ MIFIDPRU 2.5.40R(3) in relation to a *portfolio* of a *designated investment firm* or ■ MIFIDPRU 2.5.41R(3) in relation to a *portfolio* of a *third country entity*) are satisfied in respect of each such *portfolio*.
- (3) A *UK parent entity* or *MIFIDPRU investment firm* that submits an application under (1) must have the necessary authority to make the application on behalf of all entities within the *investment firm group* whose portfolios are the subject of that application.

**Consolidated K-TCD requirement**

2.5.43

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- (1) For the *K-TCD requirement* there is no coefficient in ■ MIFIDPRU 4. The requirement is instead based upon the concept of positions and exposures. The relevant provisions in ■ MIFIDPRU 4 for calculating the *K-TCD requirement* should therefore also be applied to transactions included in the *consolidated situation*.
- (2) When calculating the *K-TCD requirement* on a *consolidated basis*, transactions between counterparties included in the *consolidated situation* are disregarded. This applies irrespective of whether the exclusion in ■ MIFIDPRU 4.14.6R applies to a transaction when a *MIFIDPRU investment firm* is calculating its *K-TCD requirement* on an individual basis.

2.5.44

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- (1) When calculating its *K-TCD requirement* on a *consolidated basis*, a *UK parent entity* may only net offsetting transactions entered into between one or more entities included in the *consolidated situation* and a third party counterparty if the conditions in ■ MIFIDPRU 4.14.28R, as modified by (2), are met.
- (2) When applying ■ MIFIDPRU 4.14.28R on the basis of the *consolidated situation*, the following modifications apply:
  - any netting agreement or netting contract referenced in that rule must cover all entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted;
  - any references in that *rule* to the rights and obligations of the "*firm*" refer to the rights and obligations of the entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted; and

the legal opinion referenced in ■ MIFIDPRU 4.14.28R(3)(c):

- (i) may be obtained by the *UK parent entity* or any *MIFIDPRU investment firm* in the *investment firm group*; and
- (ii) must address the relevant claims and obligations of all entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted.

### Consolidated K-CON requirement

- 2.5.45 G (1) The *K-CON requirement* under ■ MIFIDPRU 5 applies to a *MIFIDPRU investment firm* on an individual basis in relation to positions held in its *trading book*. Broadly, the *K-CON requirement* is calculated by reference to all relevant *trading book* exposures that exceed the *concentration risk soft limit*.
- (2) ■ MIFIDPRU 2.5.46R explains how the *K-CON requirement* applies on a *consolidated basis*.

2.5.46 R When a *UK parent entity* is calculating a *K-CON requirement* on the basis of its *consolidated situation*, the provisions in ■ MIFIDPRU 5 apply, subject to the following:

- (1) the *exposure value* with regard to an individual *client* or *group of connected clients* must be calculated on the basis of all relevant exposures included in the *consolidated situation*;
- (2) to the extent that the calculation *rules* for the *K-NPR requirement* or *K-TCD requirement* are relevant to the calculation of an *exposure value* under ■ MIFIDPRU 5.4 or the *OFR* under ■ MIFIDPRU 5.7.3R(2), the *UK parent entity* must apply the methods for the calculation of the consolidated *K-NPR requirement* in ■ MIFIDPRU 2.5.32R to ■ MIFIDPRU 2.5.34R and consolidated *K-TCD requirement* in ■ MIFIDPRU 2.5.43G to ■ MIFIDPRU 2.5.44R; and
- (3) the *own funds* to be used for the purposes of calculating the limits in ■ MIFIDPRU 5.5 and ■ MIFIDPRU 5.9 on a *consolidated basis* are the consolidated *own funds* of the *investment firm group*, as explained in the *guidance* in ■ MIFIDPRU 2.5.23G.

### Prudential consolidation in practice: liquidity

2.5.47 R When applying ■ MIFIDPRU 6 on a *consolidated basis*, a *UK parent entity* must ensure that the total *liquid assets* held by the *UK entities* included within the *consolidated situation* are equal to or greater than the consolidated *liquid assets* requirement.

- 2.5.48 G (1) ■ MIFIDPRU 2.5.11R requires a *UK parent entity* to comply with the liquidity requirements in ■ MIFIDPRU 6 on the basis of its *consolidated situation*. In practice, this means that the *UK parent entity* must ensure that the *investment firm group* holds *liquid assets* equivalent to one third of the consolidated *fixed overhead requirement*, plus 1.6% of the total amount of any guarantees provided to *clients* by entities included within the *consolidated situation*.

- (2) Under ■ MIFIDPRU 2.5.47R, the required amount of consolidated liquid assets must be held by the UK entities included within the consolidated situation. This means that while *third country* entities may contribute to the consolidated *liquid assets* requirement (through the consolidated *fixed overheads* requirement), any *liquid assets* held by a *third country* entity do not count towards the *liquid assets* held by the *investment firm group* for the purposes of that rule.
- (3) UK parent entities are reminded that:
  - (a) the consolidated *liquid assets* requirement applies only where the UK parent entity is subject to consolidation obligations under ■ MIFIDPRU 2.5.11R. It does not apply where the *group capital test* under ■ MIFIDPRU 2.6 applies to an *investment firm group* instead (although ■ MIFIDPRU 6 will continue to be relevant to MIFIDPRU investment firms within that *investment firm group* on an individual basis in such circumstances); and
  - (b) a UK parent entity that is subject to consolidation obligations under ■ MIFIDPRU 2.5.11R is exempt from the consolidated liquidity requirement if the conditions in ■ MIFIDPRU 2.5.19R are met.

2.5.49 G [deleted]

**Prudential consolidation in practice: reporting by investment firms**

2.5.50 G Under ■ MIFIDPRU 2.5.7R, a UK parent entity must comply with the reporting obligations in ■ MIFIDPRU 9 on a consolidated basis. In practice, this involves reporting the same categories of information that would be reported by a MIFIDPRU investment firm to the FCA on an individual basis, but using the figures that result from applying the relevant requirements on a consolidated basis in accordance with this section. This does not apply to data item MIF007 (ICARA assessment questionnaire), which does not need to be submitted on a consolidated basis.

**Prudential consolidation in practice: governance requirements**

- 2.5.51 G (1) Under ■ MIFIDPRU 7.1.3R, a UK parent entity to which ■ MIFIDPRU 2.5.7R applies must comply with the general governance requirements in ■ MIFIDPRU 7.2 (Senior management and systems and controls) on a consolidated basis. In practice, this means that the UK parent entity must ensure that it has a proper organisational structure, effective processes and adequate internal controls covering the business of the investment firm group.
- (2) The requirements in ■ MIFIDPRU 7.3 (Risk, remuneration and nomination committees) do not apply on a consolidated basis.

**Prudential consolidation in practice: ICARA requirements**

2.5.52 G As explained in ■ MIFIDPRU 7.9.4G, an investment firm group is not required to operate an ICARA process on a consolidated basis. However, ■ MIFIDPRU 7.9.5R permits an investment firm group to operate a single group

*ICARA process covering the business carried on by that investment firm group, provided that certain requirements are met.*

## 2.6 The group capital test

2

- 2.6.1 **R** This section applies to an *investment firm group* that has been granted permission by the *FCA* to apply the *group capital test* under ■ MIFIDPRU 2.4.17R.

### Group capital test: requirements

- 2.6.2 **R** For the purposes of ■ MIFIDPRU 2.6:
- (1) 'own funds instruments' means own funds as defined in ■ MIFIDPRU 3, without applying the deductions referred to in ■ MIFIDPRU 3.3.6R(8), article 56(d), and article 66(d) of the *UK CRR*;
  - (2) the terms '*investment firm*', '*financial institution*', '*ancillary services undertaking*', '*tied agent*' and '*relevant financial undertaking*' include undertakings established in *third countries* that would satisfy the definitions of those terms if they were established in the *UK*.
- 2.6.3 **G** The definition of 'own funds instruments' for the purpose of ■ MIFIDPRU 2.6.2R ensures that significant investments in *common equity tier 1 instruments*, *additional tier 1 instruments* and *tier 2 instruments* of financial sector entities in the *investment firm group* do not need to be deducted by a *parent undertaking* when applying the *group capital test*. This is to avoid 'double counting' of those investments.
- 2.6.4 **G** ■ MIFIDPRU 3.7 contains *rules* and *guidance* on the composition of capital for *parent undertakings* subject to the *group capital test*.
- 2.6.5 **R** Where the *FCA* has granted an application under ■ MIFIDPRU 2.4.17R, a *UK parent entity* and any other *GCT parent undertakings* in the *investment firm group* must hold own funds instruments sufficient to cover the sum of the following:
- (1) the sum of the full book value of their holdings, subordinated claims and instruments referred to in ■ MIFIDPRU 3.3.6R(8), article 56(d), and article 66(d) of the *UK CRR* in *relevant financial undertakings* in the *investment firm group*; and
  - (2) the total amount of their contingent liabilities in favour of *relevant financial undertakings* in the *investment firm group*.

2.6.6

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- (1) Each *GCT parent undertaking* in the *investment firm group* must satisfy the *group capital test*. The *group capital test* can therefore apply at each level within the group structure. This mitigates the risk of leverage or capital gearing being introduced at levels underneath the *UK parent entity*.
- (2) The requirement in ■ MIFIDPRU 2.6.5R only applies to *GCT parent undertakings*. However, ■ MIFIDPRU 2.6.7R imposes obligations on *GCT parent undertakings* in relation to their *subsidiaries* that are:
  - (a) *parent undertakings* established in a *third country*; or
  - (b) *parent undertakings* incorporated in, or with their principal place of business in, the *UK* that are not *GCT parent undertakings*.
- (3) This prevents leverage and capital gearing being introduced into the *investment firm group* through:
  - (a) *intermediate parent undertakings* established in a *third country*; or
  - intermediate *parent undertakings* in the *UK* to which the *group capital test* does not directly apply.

2.6.7

R

- (1) This *rule* applies where:
  - (a) an *investment firm group* has been granted permission to apply the *group capital test* under ■ MIFIDPRU 2.4.17R; and
  - (b) a *parent undertaking* in that *investment firm group* is a *relevant financial undertaking* and either:
    - (i) is established in a *third country*; or
    - (ii) is incorporated in, or has its principal place of business in, the *UK* and is not a *GCT parent undertaking*.
- (2) Where this *rule* applies, the *responsible UK parent* must either:
  - (a) ensure that the *undertaking* in (1)(b) holds own funds instruments sufficient to cover the sum of the amounts in ■ MIFIDPRU 2.6.5R(1) and ■ (2) as they would apply to that *undertaking*; or
  - (b) hold own funds instruments sufficient to cover the sum of the amounts in ■ MIFIDPRU 2.6.5R(1) and ■ (2) that:
    - (i) apply to the *responsible UK parent* itself; and
    - (ii) would apply to the *undertaking* in (1)(b).

2.6.8

G

- (1) The effect of ■ MIFIDPRU 2.6.7R is shown through the example below of a hypothetical *investment firm group* that contains the following *undertakings*:
  - a *UK parent entity* ("A");
  - an intermediate *investment holding company* ("B"), that is incorporated in the *UK* and is a direct *subsidiary* of A;
  - an *undertaking* established in a *third country* ("C") that would be an *investment holding company* if it were established in the *UK* and that is a direct *subsidiary* of B;

an *undertaking* established in a *third country* ("D") that would be a *MIFIDPRU investment firm* if it were established in the *UK* and that is a *direct subsidiary* of C;

a *MIFIDPRU investment firm* ("E") that is a *direct subsidiary* of D;

a *tied agent* ("F") that is established in the *UK* and that is a *direct subsidiary* of B;

an *undertaking* established in a *third country* ("G") that would be a *financial institution* if it were established in the *UK* and that is a *direct subsidiary* of C;

an intermediate holding company ("H") that is incorporated in the *UK* and is a *direct subsidiary* of A; and

an *authorised payment institution* ("I") that is incorporated in the *UK* and is a *direct subsidiary* of H.

(2) The *group capital test*:

- (a) applies directly to A and B because they are both *GCT parent undertakings*;
- (b) applies only indirectly to C and D, through the obligations imposed on the *responsible UK parent*, because C and D are *parent undertakings* established in a *third country*;
- (c) applies only indirectly to H, through the obligations imposed on A in its capacity as the *responsible UK parent*, because H is not a *GCT parent undertaking*; and
- (d) does not apply to E, F, G or I because they are not *parent undertakings*.

(3) In this example, B is a *responsible UK parent* because:

- (a) B has two *subsidiaries* (a *direct subsidiary*, C, and an *indirect subsidiary*, D) that are both *parent undertakings* established in a *third country* and that would be *relevant financial undertakings* if they were established in the *UK*; and
- (b) B does not have a subsidiary in the *UK* that is the *parent undertaking* of C or D. (Although F is a *UK subsidiary* of B, F is not a *parent undertaking*.) This means that there is no intermediate *parent undertaking* in the *UK* between B and either of C or D.

(4) A is not a *responsible UK parent* in relation to C and D. This is because A has a *subsidiary*, B, that is a *parent undertaking* of C and D and that is incorporated in the *UK*. B is therefore an intermediate *parent undertaking* in the *UK* between A on the one hand and C and D on the other.

(5) B is a *responsible UK parent* in relation to C and D. Note that B is the *responsible UK parent* of both C and D, even though D is only an *indirect subsidiary* of B. This is because there is no *parent undertaking* between C and D that is established in the *UK* and the definition of a *subsidiary* includes *subsidiaries of subsidiaries*.

(6) Under ■ MIFIDPRU 2.6.7R(2), B therefore has the choice of whether to:

- (a) ensure that both C and D comply with the requirements of the *group capital test* as it would apply to them if they were established in the *UK*; or
  - (b) hold own funds instruments that are sufficient to cover the sum of the requirements of the *group capital test* that apply to B and would apply to C and D if they were established in the *UK*.
- (7) If B chooses the approach in (6)(a), B must:
- (a) hold sufficient own funds instruments to cover the sum of B's holdings in, and contingent liabilities in favour of, C and F;
  - (b) ensure that C holds sufficient own funds instruments to cover the sum of C's holdings in, and contingent liabilities in favour of, D and G; and
  - (c) ensure that D holds sufficient own funds instruments to cover the sum of D's holdings in, and contingent liabilities in favour of, E.
- (8) If B chooses the approach in (6)(b), B must hold sufficient own funds instruments to cover the sum of:
- (a) B's holdings in, and contingent liabilities in favour of, C and F;
  - (b) C's holdings in, and contingent liabilities in favour of, D and G; and
  - (c) D's holdings in, and contingent liabilities in favour of, E.
- (9) A is, however, a *responsible UK parent* in relation to H. This is because A is a *GCT parent undertaking* that is the *parent undertaking* of H. H is a *relevant financial undertaking* (being a holding company, and therefore a *financial institution*) and a *parent undertaking*. H is not a *GCT parent undertaking* because H is not an *authorised person* and does not have a *MIFIDPRU investment firm* as a *subsidiary*. There is also no intermediate *GCT parent undertaking* between A and H.
- (10) In a similar way to B above, A therefore has a choice under ■ MIFIDPRU 2.6.7R(2) of whether to:
- (a) ensure that H complies with the requirements of the *group capital test* as if it applied directly to H; or
  - (b) hold own funds instruments that are sufficient to cover the sum of the requirements of the *group capital test* that apply to A and would apply to H.
- (11) If A chooses the approach in (10)(a), A must:
- (a) hold sufficient own funds instruments to cover the sum of A's holdings in, and contingent liabilities in favour of, B and H; and
  - (b) ensure that H holds sufficient own funds instruments to cover the sum of H's holdings in, and contingent liabilities in favour of, I.
- (12) If A chooses the approach in (10)(b), A must hold sufficient own funds instruments to cover the sum of:
- (a) A's holdings in, and contingent liabilities in favour of, B and H; and
  - (b) H's holdings in, and contingent liabilities in favour of, I.



2.6.9 **R** A UK parent entity must have systems in place to monitor and control the sources of capital and funding of all *relevant financial undertakings* within the *investment firm group*.

**Group capital test: reporting requirements**

2.6.10 **R** (1) Where the FCA has granted an application under ■ MIFIDPRU 2.4.17R, a UK parent entity and any other *GCT parent undertakings* in the *investment firm group* must comply with the reporting requirements in (2).

Each *GCT parent undertaking* in (1) must:

- (a) report in accordance with ■ MIFIDPRU 9 how that *GCT parent undertaking* meets the *group capital test*; and
- (b) if the *GCT parent undertaking* is a *responsible UK parent*, also report in accordance with ■ MIFIDPRU 9 how:
  - (i) the *undertaking* in ■ MIFIDPRU 2.6.7R(1)(b) holds the required amount of own funds instruments referenced in ■ MIFIDPRU 2.6.7R(2)(a); or
  - (ii) the *GCT parent undertaking* holds at least the amount of own funds instruments to cover the amount applicable to the *undertaking* in ■ MIFIDPRU 2.6.7R(1)(b), as referenced in ■ MIFIDPRU 2.6.7R(2)(b).

2.6.11 **R** An *investment firm group* may designate:

- (1) a *parent undertaking* in the UK that is part of the *investment firm group*; or
- (2) a *MIFIDPRU investment firm* that is part of the *investment firm group* and that is not a *parent undertaking*;

to submit reports to the FCA under ■ MIFIDPRU 2.6.10R on behalf of the *GCT parent undertakings* in the *investment firm group*.

**Inclusion of holding companies in supervision of compliance with the group capital test**

2.6.12 **G** UK investment holding companies and UK mixed financial holding companies are included in the FCA's supervision of compliance with the *group capital test* where they are *GCT parent undertakings*.

## 2.7 Investment holding companies, mixed financial holding companies and mixed-activity holding companies

### Qualifications of directors

- 2.7.1 **G** Under section 143R of the *Act*, a *UK investment holding company*, *UK mixed financial holding company* or *UK mixed-activity holding company* must take reasonable care to ensure that the members of its *management body* are of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties effectively.

### Mixed-activity holding companies

- 2.7.2 **G**
- (1) Under section 165 of the *Act*, the *FCA* may require a *parent undertaking* of a *MIFIDPRU investment firm* to provide information that is relevant for the *FCA*'s supervision of the *MIFIDPRU investment firm*.
  - (2) Under section 167 of the *Act*, the *FCA* may appoint an investigator to verify the information received from a *parent undertaking* of a *MIFIDPRU investment firm* and any *subsidiaries* of that *parent undertaking*.
  - (3) The powers in (1) and (2) also apply to a *mixed-activity holding company*.
- 2.7.3 **R**
- (1) Where the *parent undertaking* of a *MIFIDPRU investment firm* is a *UK mixed-activity holding company*, the *MIFIDPRU investment firm* must have in place adequate risk management processes and internal control mechanisms.
  - (2) The processes and mechanisms in (1) must include sound reporting and accounting procedures to identify, measure, monitor and control transactions between the *firm*, the *UK mixed-activity holding company* and its *subsidiaries*.

### Sanctions

- 2.7.4 **G** Under section 143W of the *Act*, the *FCA* may impose disciplinary measures on the following, where they are not *authorised persons*, to end or mitigate breaches of a requirement under the *MIFIDPRU sourcebook* or sections 143K, 143R or 143S(6) of the *Act*:

- (1) a *UK investment holding company*;
- (2) a *UK mixed financial holding company*;
- (3) a *UK mixed-activity holding company*; or
- (4) a member of the *management body* of the entities in (1) to (3).



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## **Application under MIFIDPRU 2.3.3R for an exemption from application of specific requirements on an individual basis**

### **Part A – Permission under MIFIDPRU 2.3.1R to be exempt from disclosure requirements in MIFIDPRU 8 (Disclosure by investment firms) for SNI firms in consolidated insurance groups**

MIFIDPRU 2 Annex 1R(A) Part A – Permission under MIFIDPRU 2.3.1R to be exempt from disclosure requirements.pdf

### **Part B – Individual exemption from liquidity requirements under MIFIDPRU 2.3.2R for MIFIDPRU investment firms in consolidated CRR or MIFIDPRU groups**

MIFIDPRU 2 Annex 1R(B) Part B – Individual exemption from liquidity requirements under MIFIDPRU 2.3.2R.pdf



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**Application under MIFIDPRU 2.4.17R for permission to apply the group capital test**

[*Editor's note:* the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 2R Application under MIFIDPRU 2.4.17R for permission to apply the group capital test.pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%202R%20Application%20under%20MIFIDPRU%202.4.17R%20for%20permission%20to%20apply%20the%20group%20capital%20test.pdf)]





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**Notification under MIFIDPRU 2.5.17R of intended use of proportional consolidation in respect of a relevant financial undertaking**

[Editor's note: the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 3R Notification under MIFIDPRU 2.5.17R of the intended use of proportional consolidation.pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%203R%20Notification%20under%20MIFIDPRU%202.5.17R%20of%20the%20intended%20use%20of%20proportional%20consolidation.pdf)]



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**Application under MIFIDPRU 2.5.19R for an exemption from liquidity requirements on a consolidated basis**

[Editor's note: the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 4R Application for exemption from liquidity requirements on a consolidated basis under MIFIDPRU 2.5.19R .pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%204R%20Application%20for%20exemption%20from%20liquidity%20requirements%20on%20a%20consolidated%20basis%20under%20MIFIDPRU%202.5.19R.pdf)]



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**Application under MIFIDPRU 2.5.34R(2) for permission to use offsetting positions when calculating K-NPR on a consolidated basis**

[Editor's note: the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 5R Application under MIFIDPRU 2.5.34R for permission to use offsetting positions .pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%205R%20Application%20under%20MIFIDPRU%202.5.34R%20for%20permission%20to%20use%20offsetting%20positions.pdf)]



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**Application under MIFIDPRU 2.5.40R for permission to include a portfolio of a designated investment firm in consolidated K-CMG**

[Editor's note: the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 6R Application under MIFIDPRU 2.5.40R for permission to include a portfolio.pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%206R%20Application%20under%20MIFIDPRU%202.5.40R%20for%20permission%20to%20include%20a%20portfolio.pdf)]





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**Application under MIFIDPRU 2.5.41R for permission to include  
portfolio of a third country entity in consolidated K-CMG**

[Editor's note: the form can be found at this address: [https://www.handbook.fca.org.uk/form/MIFIDPRU 2 Annex 7R Application under MIFIDPRU 2.5.41R for permission to include a portfolio of a third country entity .pdf](https://www.handbook.fca.org.uk/form/MIFIDPRU%20Annex%207R%20Application%20under%20MIFIDPRU%202.5.41R%20for%20permission%20to%20include%20a%20portfolio%20of%20a%20third%20country%20entity.pdf)]



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**Notification under MIFIDPRU 2.4.20R relating to membership of an  
investment firm group and/or a financial conglomerate**

[Editor's note: the form can be found at this address: [MIFIDPRU\\_2\\_Annex\\_8R\\_20233103.pdf](#)]

