

## Chapter 7

# Governance and risk management

## 7.9 ICARA process: firms forming part of a group

- 7.9.1** **G** This section contains:
- (1) a requirement for individual *MIFIDPRU investment firms* to take into account group risk as part of their *ICARA process*;
  - (1A) *guidance* on the extent to which an *investment firm group* may operate an *ICARA process* on a *consolidated basis*;
  - (2) *rules and guidance* on the extent to which an *investment firm group* may manage risks on a *group basis* and may operate a *group ICARA process*; and
  - (3) *rules and guidance* on the extent to which the position of multiple *MIFIDPRU investment firms* may be combined with a single *ICARA document*.
- Analysis of group risk by individual firms**.....
- 7.9.2** **R** Where a *MIFIDPRU investment firm* is a part of a *group*, the *firm's ICARA process* must take into account any material risks or potential harms that may result from the *firm's* relationship with other members of that *group* or the *group* as a whole.
- 7.9.3** **G** The requirement in **■ MIFIDPRU 7.9.2R** applies in relation to:
- (1) any *group*, irrespective of whether that *group* is an *investment firm group*; and
  - (2) any relationship that the *firm* has with any member of that *group*, irrespective of whether the other entity is an *authorised person*.
- Consolidated ICARA process**.....
- 7.9.4** **G**
- (1) An *investment firm group* to which **■ MIFIDPRU 2.5** (Prudential consolidation) applies is not normally required to operate an *ICARA process* on a *consolidated basis*.
  - (2) However, on a case-by-case basis, the *FCA* may determine that a particular *investment firm group* should operate an *ICARA process* on a *consolidated basis* (ie, as if the *overall financial adequacy rule* applied to the *consolidated situation*, so that the *UK parent entity* and the *relevant financial undertakings* in the *investment firm group*

were treated as a single *MIFIDPRU investment firm*). (2A) includes examples of such cases. Therefore, in appropriate cases, the *FCA* may:

- (a) invite a *UK parent entity* to apply for the imposition of a *requirement* to operate a consolidated *ICARA process* under section 55L(5) or section 143K(1) of the *Act*; or
  - (a) impose a *requirement* on the *FCA's* own initiative on a *UK parent entity* to operate a consolidated *ICARA process* under section 55L(3) or section 143K(3) of the *Act*.
- (2A) For the purposes of (2), examples of such cases may include where the *FCA* concludes that:
- (a) the individual *ICARA process* operated by a *MIFIDPRU investment firm* within an *investment firm group*, or the group *ICARA process* operated by an *investment firm group*, does not adequately reflect certain material risks that arise in the context of the *investment firm group* as a whole;
  - (b) the operation of a group or an individual *ICARA process* does not enable the *FCA* to effectively supervise the compliance of the *investment firm group*, or any of the individual *MIFIDPRU investment firms* within it, with the obligations in ■ MIFIDPRU 7, due to the structure of the *investment firm group*;
  - (c) *authorised persons* (other than *MIFIDPRU investment firms*) within the *investment firm group* conduct a material amount of business and the individual or group *ICARA process* does not adequately reflect the impact of this business;
  - (d) a *MIFIDPRU investment firm* within the *investment firm group* is materially dependent on a *relevant financial undertaking* (other than a *MIFIDPRU investment firm*) within the *investment firm group* for either revenue or services;
  - (e) the financial resilience of the *investment firm group* could adversely affect the ongoing financial resilience of the *MIFIDPRU investment firms* within the *investment firm group* (for example, due to significant levels of goodwill); and
  - (f) there are significant amounts of on- and off-balance sheet claims or liabilities (excluding *own funds*) between one or more *MIFIDPRU investment firms* and other *relevant financial undertakings* within the *investment firm group*, and they are not short-term or non-recurring.
- (3) Where the *FCA* decides to impose a *requirement* on a *UK parent entity* to operate an *ICARA process* on a *consolidated basis*, it will normally discuss its expectations around the operation of that *ICARA process* in further detail with the *UK parent entity*.
- (4) In appropriate cases, the *FCA* may specify that a particular entity (whether or not it is an *authorised person*) should be excluded from the *consolidated situation*. Where this is the case, the consolidated *ICARA process* should reflect the modified scope of the *consolidated situation*. The *FCA* may adopt this approach where, for example, the inclusion of the entity within the *consolidated situation* would result in a misleading assessment of the financial resources available to, or the harms posed by, the relevant *investment firm group*.

- (5) An ICARA process operated by an investment firm group on a consolidated basis is in addition to the individual ICARA process operated by a MIFIDPRU investment firm within an investment firm group, or to the group ICARA process operated by an investment firm group.

### Group ICARA process

7.9.5

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Subject to ■ MIFIDPRU 7.9.7R, an investment firm group (whether it is subject to ■ MIFIDPRU 2.5 or not) may operate a group ICARA process, provided that the following conditions are satisfied:

the group ICARA process is consistent with the manner in which the business of the investment firm group, and the risks arising from it, are operated and managed in practice;

any assessment under the group ICARA process of own funds or liquid assets that are required to cover the identified risks is allocated between individual firms within the investment firm group on a reasonable basis and that basis is properly documented;

each MIFIDPRU investment firm covered by the group ICARA process complies with the overall financial adequacy rule on an individual basis;

each MIFIDPRU investment firm covered by the group ICARA process maintains a separate wind-down plan for the purposes of ■ MIFIDPRU 7.5.7R and applies the wind-down triggers on an individual basis;

the notification requirements in ■ MIFIDPRU 7.6.11R and ■ 7.7.14R apply in relation to each individual MIFIDPRU investment firm included within the group ICARA process, using the amounts determined in accordance with (2) to (4);

the management of any risks on a group basis takes place within one of the following entities:

- (a) a MIFIDPRU investment firm within the investment firm group; or
- (b) the UK parent entity of the investment firm group;

the governing body of the relevant entity in (6) has accepted overall responsibility for the group ICARA process and for ensuring compliance with this rule;

the requirement in ■ MIFIDPRU 7.8.8R for the governing body of an individual MIFIDPRU investment firm to approve the content of the ICARA document applies to the governing body of the relevant entity in (7); and

each individual MIFIDPRU investment firm included within the group ICARA process submits data item MIF007 (ICARA assessment questionnaire) to the FCA on an individual basis, reflecting the position of that firm as it results from the conclusions of the group ICARA process.

- 7.9.6** **R** Except as specified in ■ MIFIDPRU 7.9.5R, a *MIFIDPRU investment firm* that is included within a *group ICARA process* is not required to comply with the requirements in ■ MIFIDPRU 7.4 to ■ MIFIDPRU 7.8 on an individual basis.
- 7.9.7** **R**
- (1) An *investment firm group* must not:
    - (a) operate a *group ICARA process* if the *FCA* has directed the *investment firm group* to manage or assess the risks arising from its business on a different basis because one or more of the conditions in (2) applies in relation to that *investment firm group*; or
    - (b) include within a *group ICARA process* any *MIFIDPRU investment firm* that the *FCA* has directed to manage or assess the risks arising from its business on a different basis because one or more of the conditions in (2) applies in relation to that *firm*.
  - (2) The relevant conditions are that:
    - (a) there is a material risk that potential harms arising in relation to the *firm* or *investment firm group* would not be adequately captured through a *group ICARA process*;
    - (b) there is a material risk that a *group ICARA process* would result in excessive complexity that would interfere with the *FCA's* ability to supervise the compliance of the *investment firm group*, or any of the individual *MIFIDPRU investment firms* within it, with its obligations under ■ MIFIDPRU 7; or
    - (c) the *investment firm group* previously operated, or the *firm* was previously included within, a *group ICARA process* that did not meet the requirements in ■ MIFIDPRU 7.9.
- 7.9.8** **R** Except as otherwise specified in ■ MIFIDPRU 7.9.5R, a *group ICARA process* must comply with the requirements in ■ MIFIDPRU 7.4 to ■ MIFIDPRU 7.8 as if the references in those sections to a "*MIFIDPRU investment firm*" are references to the *investment firm group* operating that *group ICARA process*.
- 7.9.8A** **G**
- (1) As explained in ■ MIFIDPRU 7.9.6R, a *MIFIDPRU investment firm* that is included within a *group ICARA process* does not generally need to comply with the requirements in ■ MIFIDPRU 7.4 to ■ MIFIDPRU 7.8 on an individual basis.
  - (2) However, as ■ MIFIDPRU 7.9.5R explains, an *investment firm group* can operate a *group ICARA process* only if each *MIFIDPRU investment firm* within it complies with certain provisions of ■ MIFIDPRU 7.4 to ■ MIFIDPRU 7.8 on an individual basis.
  - (3) The following table explains which provisions a *MIFIDPRU investment firm* must comply with on an individual basis in order to meet the relevant conditions in ■ MIFIDPRU 7.9.5R:

Relevant condition in MIFIDPRU 7.9.5R	Main rules and related guidance that must be met on an individual basis to comply with the conditions in MIFIDPRU 7.9.5R
(3) – each MIFIDPRU investment firm must comply with the overall financial adequacy rule	MIFIDPRU 7.4.7R and provisions relating to the overall financial adequacy rule
(4) – each MIFIDPRU investment firm must maintain a separate wind-down plan and apply the wind-down triggers on an individual basis	MIFIDPRU 7.5.7R to MIFIDPRU 7.5.10G
(5) – each MIFIDPRU investment firm must comply with the requirements to notify the FCA of certain levels of own funds and liquid assets	MIFIDPRU 7.6.11R to MIFIDPRU 7.6.13G MIFIDPRU 7.7.14R to MIFIDPRU 7.7.15G
(9) – each MIFIDPRU investment firm must submit data item MIF007	MIFIDPRU 7.8.4R MIFIDPRU 7.8.5G MIFIDPRU 9.2

- (4) The effect of ■ MIFIDPRU 7.9.8R is that all the rules and guidance in ■ MIFIDPRU 7.4 to ■ MIFIDPRU 7.8 (except those specified in the table in ■ MIFIDPRU 7.9.8AG(3)) apply at the level of the investment firm group.
- (5) Where a MIFIDPRU investment firm is included in a group ICARA process in accordance with ■ MIFIDPRU 7.9.5R, the firm is reminded that, under ■ MIFIDPRU 9.2.1R and ■ MIFIDPRU 9.2.3R (as applicable), it must still submit data item MIF007 to the FCA on an individual basis. Data item MIF007 will provide information about the firm that has been derived from that group ICARA process.

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This guidance provision covers the following practical aspects in relation to the group ICARA process:

- (1) Under ■ MIFIDPRU 7.9.7R, if an investment firm group is operating a group ICARA process that is inadequate to address the potential harms arising from its business, the FCA may direct all members of the investment firm group, or individual MIFIDPRU investment firms within it, to apply the ICARA process on an individual basis.
- (2) In addition, a group ICARA process must satisfy the requirements in ■ MIFIDPRU 7.9.5R on an ongoing basis. If any of the conditions in that rule for the use of the group ICARA process are not met, all MIFIDPRU investment firms covered by that group ICARA process must operate individual ICARA processes instead.
- (3) Under a group ICARA process, the risk management and analysis of the financial impact of the risks is carried out at the level of the investment firm group (either by the UK parent entity or by a MIFIDPRU investment firm (■ MIFIDPRU 7.9.5R(6)). Each firm in the investment firm group is then allocated on a reasonable basis the assessment of own funds or liquid assets that are required to cover identified risks.

- (3A) Where the assessment of *own funds* or *liquid assets* uses a methodology that includes intra-group netting or offsets, the amount allocated from such assessment of *own funds* and *liquid assets* to each *firm* should be adjusted to remove any benefit which may otherwise have been applied at the level of the *investment firm group*.
- (3B) In addition, each *MIFIDPRU investment firm* in the *investment firm group* must comply with the *overall financial adequacy rule* on an individual basis.
- (3C) An *investment firm group* that wishes to operate a *group ICARA process* must therefore ensure that its risk management processes are sufficiently robust to satisfy the requirements in ■ MIFIDPRU 7.9.5R and that there is appropriate accountability of the responsible *governing body* in accordance with the requirements of that *rule*.
- (4) The *FCA* considers that it is important that there is a proper analysis of how the *overall financial adequacy rule* and wind-down planning arrangements apply to each individual *MIFIDPRU investment firm* within the *investment firm group*. This reflects the fact that the solvency of *firms* must be assessed on an individual basis and legal entities must be wound down separately.

**Combined ICARA documents covering multiple group entities**

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Where an *investment firm group* contains multiple *MIFIDPRU investment firms*, the *ICARA document* for each *firm* may be combined within a single document, provided that:

- (1) to the extent that any risks are managed under a *group ICARA process*, this is clearly documented and explained; and
- (2) for any risks that are managed on an individual basis, and for any requirements that ■ MIFIDPRU 7.9.5R specifies must always apply on an individual basis under a *group ICARA process*, the combined *ICARA document* clearly explains the position of each individual *firm* and how it complies with the relevant requirements.

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The effect of ■ MIFIDPRU 7.9.10R is that even where an *investment firm group* does not operate a *group ICARA process*, a single *ICARA document* can be used to document the individual *ICARA processes* operated by multiple *MIFIDPRU investment firms* within that *investment firm group*. However, the single *ICARA document* must clearly explain how each *MIFIDPRU investment firm* meets the applicable requirements on an individual basis.