

Chapter 2

Recognition requirements

2.2 Method of satisfying the recognition requirements

2.2.1 UK Recognition Requirements Regulations, Regulation 6

(1) In considering whether a [UK recognised body] or applicant satisfies recognition requirements applying to it under these [Recognition Requirements Regulations], the [FCA] may take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions within the meaning of section 300E of the Act.

(2) Without prejudice to the generality of paragraph (1), a [UK recognised body] or applicant may satisfy recognition requirements applying to it under these [Recognition Requirements Regulations] by making arrangements for functions to be performed on its behalf by any other person.

(3) Where a [UK recognised body] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the Act on the [UK recognised body] or applicant to satisfy recognition requirements applying to it under these [Recognition Requirements Regulations], but it is in addition a recognition requirement applying to the [UK recognised body] or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

Relevant circumstances

2.2.2 G The FCA will usually expect :

- (1) the constitution, *regulatory provisions* and practices of the *UK recognised body* or applicant;
- (2) the nature (including complexity, diversity and risk) and scale of the *UK recognised body's* or applicant's business;
- (3) the size and nature of the market which is supported by the *UK recognised body's* or applicant's *facilities*;
- (4) the nature and status of the types of investor who use the *UK recognised body's* or applicant's *facilities* or have an interest in the market supported by the *UK recognised body's* or applicant's *facilities*;
- (4A) competition in the markets for services provided, or proposed to be provided, by the *UK recognised body* or applicant in its capacity as such; and
- (5) the nature and scale of the risks to the *statutory objectives* associated with the matters described in (1) to (4A);

to be among the relevant circumstances which it will take into account in considering whether a *UK recognised body* or applicant satisfies the *recognition requirements*.

Outsourcing

2.2.3 **G** It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. The *recognition requirement* referred to in Regulation 6(3) applies to the *UK recognised body* and not to any *person* who performs any function on its behalf. In this context, for a *person* to be "fit and proper" does not necessarily imply that they are an *authorised person*, or qualified to be so, or that the required standard is the same as that required either for *authorised persons* or *recognised bodies*.

2.2.4 **G** If a *UK recognised body* makes arrangements for functions to be performed on its behalf by *persons* who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.

[Note: *MiFID RTS 7* contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

2.2.5 **G** If a *person* who performs a function on behalf of a *UK recognised body* is himself carrying on a *regulated activity* in the *United Kingdom* , he will, unless he is a *person* to whom the *general prohibition* does not apply, need to be either an *authorised person* or an *exempt person* . The *person* to whom a function is delegated is not covered by the *UK recognised body's* exemption.

2.2.6 **G** In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on its behalf:

- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
- (2) has adequate systems and controls to manage that function and to report on its performance to the *UK recognised body*;
- (3) is managed by *persons* of sufficient skill, competence and integrity;
- (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under the *Act* ; and
- (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act* .

[Note: *MiFID RTS 7* contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

2.2.7

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In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:

- (1) the contracts (and other relevant *documents*) between the *UK recognised body* and the *person* who performs the delegated function;
- (2) the arrangements made to monitor the performance of that function; and
- (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

[**Note:** *MiFID RTS 7* contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]