

Chapter 12

Liquidity standards

12.8 Cross-border and intra-group management of liquidity

- 12.8.1 **G** Every *firm* subject to ■ BIPRU 12 is subject to the *overall liquidity adequacy rule*. The effect of that rule is that every *firm* is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that rule relying on its own liquidity resources. Where the *firm* is an *incoming EEA firm* or *third country BIPRU firm* compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in ■ BIPRU 12.2.3 R.
- 12.8.2 **G** However, the *appropriate regulator* recognises that there may be circumstances in which it would be appropriate for a *firm* to rely on liquidity resources which can be made available to it by other members of its *group*, or for a *firm* to rely on liquidity resources elsewhere in the *firm* for the purposes of ensuring that its *UK branch* has adequate liquidity resources in respect of the activities carried on from the *branch*. Where the *appropriate regulator* is satisfied that the statutory tests in section 138A (Modification or waiver of rules) of the *Act* are met, the *appropriate regulator* will consider modifying the *overall liquidity adequacy rule* to permit reliance on liquidity support of this kind.
- 12.8.3 **G** ■ BIPRU 12.8 provides *guidance* on two types of modification to the *overall liquidity adequacy rule* and to other *rules* in ■ BIPRU 12 for which the *appropriate regulator* considers a *firm* may wish to apply, namely:
- (1) an *intra-group liquidity modification*; and
 - (2) a *whole-firm liquidity modification*.
- 12.8.4 **G** In considering whether the statutory tests in section 138A of the *Act* have been met, the *appropriate regulator* will, amongst others, have regard to the factors detailed below in relation to an *intra-group liquidity modification* (of the kind permitting the inclusion in a *firm's* liquidity resources of *parent undertaking* liquidity support) and a *whole-firm liquidity modification*. In practice it is likely that the *appropriate regulator* will view these as preconditions to the grant of an *intra-group liquidity modification* of that type or a *whole-firm liquidity modification* and will therefore ordinarily need to be satisfied fully that each has been adequately addressed. They include matters on which the *appropriate regulator* will need to reach agreement with the *Home State regulator*, *third country competent authority*, or other relevant supervisor, and also matters which it will need to agree directly with a *firm* or the *parent undertaking* of a *firm*. It is likely that a number of these matters will be reflected as requirements or conditions in the modification.

12.8.5 **G** This section represents merely an indication of the matters to which the *appropriate regulator* will have regard in considering an application for a *whole-firm liquidity modification* or an *intra-group liquidity modification*. In considering such an application, the *appropriate regulator* will always take into account anything that it reasonably considers to be relevant for the purposes of assessing whether the statutory tests in section 138A of the *Act* are met. In doing so, it will have regard to the role and importance of a *firm* or *UK branch* in the *UK financial system*.

12.8.6 **G** The *appropriate regulator* anticipates that an application to modify the *overall liquidity adequacy rule* may be accompanied by an application to waive or modify other rules in **■ BIPRU 12** (for example, the stress testing and *contingency funding plan rules* in **■ BIPRU 12.4**). The *appropriate regulator* offers some *guidance* in this section on applications of this type.

Intra-group liquidity modification: general

12.8.7 **G** The *appropriate regulator* recognises that a *firm* may be part of a wider *group* which manages its liquidity on a *group-wide* basis. A *firm* which considers that the statutory tests in section 138A of the *Act* are met may apply for an *intra-group liquidity modification* permitting it to rely on liquidity support from elsewhere in its *group*. Until a *firm* has such a modification it will need to meet the *overall liquidity adequacy rule* from its own liquidity resources. The effect of an *intra-group liquidity modification* is to modify the *overall liquidity adequacy rule* to recognise the extent to which the *appropriate regulator* is prepared to accept liquidity resources from other entities in a *firm's* group for the purposes of the *firm's* own compliance with the *overall liquidity adequacy rule*. **■ BIPRU 12.8.11G** offers additional *guidance* on the likely extent of this recognition.

12.8.8 **G** **■ BIPRU 12.8.14 G** to **■ BIPRU 12.8.20 G** set out the *appropriate regulator's* likely approach in considering an application for an *intra-group liquidity modification* in which a *firm* seeks to rely on support from a *parent undertaking* which is constituted under the law of a country or territory outside the *United Kingdom*.

12.8.9 **G** The *appropriate regulator* may also consider an application for an *intra-group liquidity modification* where a *firm* wishes to rely on liquidity resources from an entity in its *group* other than an *overseas parent undertaking*. The *appropriate regulator* recognises that a *firm* incorporated in the *United Kingdom* and to which **■ BIPRU 12** applies may wish to rely on liquidity support from another such *firm*. In practice, the *appropriate regulator* anticipates that a *firm* applying for an *intra-group liquidity modification* in these circumstances will be asking for permission to rely on support from its *parent undertaking* in the *United Kingdom*. In any event, the *appropriate regulator* will consider such applications on a case-by-case basis and will apply the approach outlined in **■ BIPRU 12.8.14 G** to **■ BIPRU 12.8.20 G** where relevant and by analogy.

12.8.10 **G** The *appropriate regulator* also recognises that a *firm* incorporated in the *United Kingdom* and to which **■ BIPRU 12** applies may wish to rely on liquidity support from a *subsidiary undertaking* of that *firm* which is incorporated in a country or territory outside the *United Kingdom*. The *appropriate regulator*

is, however, likely to consider that an application for an *intra-group liquidity modification* that contemplates reliance for liquidity support on only, or mostly, an applicant *firm's overseas subsidiary undertakings* is unlikely to satisfy the tests in section 138A of the Act. As a general principle, and unless persuaded otherwise by an applicant *firm's* arguments in support of its application for an *intra-group liquidity modification*, the *appropriate regulator* is likely to take the view that a *firm's overseas subsidiary undertakings* are likely to be constrained in their ability to provide meaningful levels of liquidity support to their *parent undertaking*.

12.8.11 **G** In each application for an *intra-group liquidity modification*, the *appropriate regulator* will consider the extent to which it is appropriate to modify the *overall liquidity adequacy rule* to allow reliance by an applicant *firm* on liquidity resources elsewhere in a *firm's group*. However, it is unlikely that the *appropriate regulator* would consider the conditions in section 138A of the Act to be met in circumstances in which the *overall liquidity adequacy rule* was modified to allow unlimited reliance on liquidity resources that are not the applicant *firm's* own. As a general principle, the *appropriate regulator* is likely to wish to ensure that, having regard to the results of an applicant *firm's ILAA*:

- (1) once modified, the *overall liquidity adequacy rule* still requires the *firm* to have adequate liquidity resources to enable it to wind down its business in an orderly and controlled manner in circumstances in which its business ceases to be viable; and
- (2) the amount of liquidity support permitted in the modification is a reasonable one having regard to the total liquidity resources of the *group* entity on which it is proposed that reliance should be placed.

12.8.12 **G** In determining the appropriate duration of an *intra-group liquidity modification*, the *appropriate regulator* will have regard to the role and importance of the *firm* in question in the *UK financial system*. In some cases, the *appropriate regulator* may take the view that an *intra-group liquidity modification* covering a *firm* whose role and importance in the *UK financial system* are significant ought to be reviewed more regularly than one granted in respect of a less systemically significant *firm*. The *appropriate regulator* will consider this issue in determining the appropriate duration of such a modification.

12.8.13 **G** In modifying the *overall liquidity adequacy rule* by means of an *intra-group liquidity modification*, the *appropriate regulator* may also modify the stress testing and *contingency funding plan rules* in ■ BIPRU 12.4 such that an applicant *firm* may achieve compliance with those *rules* by its *parent undertaking* conducting *group-wide* stress testing and preparing a *group-wide contingency funding plan* which gives adequate recognition to the position of the applicant *firm*.

Consideration of an application for an intra-group liquidity modification

12.8.14 **G** ■ BIPRU 12.8.15 G to ■ BIPRU 12.8.20 G set out some of the matters on which the *appropriate regulator* will expect to be satisfied before granting an *intra-group liquidity modification* where permission is sought to rely on support

from an *overseas parent undertaking* which is itself subject to a regime of liquidity regulation.

12.8.15 **G** In relation to the regime of liquidity regulation imposed by the authority that regulates for liquidity purposes an applicant *firm's parent undertaking* which is constituted under the law of a country or territory outside the *United Kingdom*, the *appropriate regulator* will ordinarily expect to be satisfied that:

- (1) the regime of liquidity regulation to which that *undertaking* is subject delivers outcomes as regards the regulation of that *undertaking's liquidity risk* that are broadly equivalent to those intended by ■ BIPRU 12; and
- (2) there is clarity as to any legal constraints imposed by the authority which regulates that *undertaking* for liquidity purposes on the provision of liquidity from that *undertaking* to the applicant *firm*.

12.8.16 **G** It will not always be the case that an applicant *firm* wishes to rely on a *parent undertaking*, or other *group* entity, that is itself subject to a regime of liquidity regulation, whether or not equivalent to the *appropriate regulator's*. In assessing a *firm's* application for an *intra-group liquidity modification*, the *appropriate regulator* will always have regard to the regulatory framework to which the entity on which it is proposed to rely for liquidity support is subject. Other things being equal, however, the *appropriate regulator* is more likely to be persuaded that the tests in section 138A of the *Act* are met in circumstances in which the entity on which it is proposed to rely for liquidity support is itself subject to an appropriate degree of regulation. Even where the *parent undertaking*, or other *group* entity, in question is subject to a regime of liquidity regulation, the *appropriate regulator* will in principle be more likely to grant an *intra-group liquidity modification* in circumstances in which the applicant *firm* does not accept a significant amount of retail *deposits*.

12.8.17 **G** In relation to an applicant *firm* wishing to rely on liquidity support from a *parent undertaking* constituted under the law of a country or territory outside the *United Kingdom*, the *appropriate regulator* will ordinarily expect to reach agreement with the authority that regulates that *undertaking* for liquidity purposes in a number of areas, including agreement that:

- (1) it will notify the *appropriate regulator* of any material or persistent breaches by that *undertaking* of that authority's liquidity rules, or of risks that such breaches are imminent;
- (2) it is satisfied with the adequacy of the *parent undertaking's* arrangements for *liquidity risk* management;
- (3) it is satisfied as to the adequacy of the *parent undertaking's* liquidity resources including:
 - (a) the size and quality of its liquid assets buffer; and
 - (b) the size and quality of any liquidity resources that are held in the *United Kingdom* for the purpose of meeting the liabilities of an applicant *firm* as they fall due;

- (4) it does not object to any undertakings given by that *parent undertaking* in respect of an applicant *firm* to ensure that the *firm* has adequate liquidity resources; and
- (5) it will have due regard to the views of the *appropriate regulator* in its supervision of the liquidity position of that *parent undertaking*.

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In relation to an applicant *firm* wishing to rely on liquidity support from a *parent undertaking* constituted under the law of a country or territory outside the *United Kingdom*, the *appropriate regulator* will, before granting an *intra-group liquidity modification*, ordinarily expect to have reached agreement with that *parent undertaking* that:

- (1) it will make available liquidity resources at all times to that applicant *firm* if needed;
- (2) it will enter into an undertaking in a suitable form with an applicant *firm* committing it to provide liquidity support to that *firm* on the occurrence of certain defined events;
- (3) it will ensure that the applicant *firm* maintains liquidity resources of appropriate size and quality in the *United Kingdom* for the purposes of meeting the liquidity needs of that *firm*;
- (4) it will maintain arrangements, including having adequate liquidity resources, to ensure that it, the applicant *firm* and any other entities in its *group* to which it provides liquidity support are able to wind down their businesses in an orderly and controlled manner in circumstances where its, or their, businesses cease to be viable;
- (5) it will make available to the *appropriate regulator* information in an appropriate format on *group* liquidity; and
- (6) it will participate in the *appropriate regulator's* thematic supervisory work in relation to liquidity when requested to do so by the *appropriate regulator*.

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The *appropriate regulator* will wish to ensure that it has adequate data at the time of consideration of the *intra-group liquidity modification* application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of any *group* entity on which the applicant *firm* proposes to rely for liquidity purposes. It is therefore likely that an applicant *firm* will be asked to provide as part of its application relevant liquidity *data items* populated by the entities on which the applicant *firm* proposes to rely. It is also likely that an applicant *firm* will be asked to ensure as a condition of the modification, if granted, that the entities on which it is given permission to rely for the purpose of meeting the *overall liquidity adequacy rule* provide completed relevant *data items* to the *appropriate regulator* on a continuing basis. The frequency of *data item* submission will be determined as part of the *appropriate regulator's* consideration of the applicant *firm's* case but is in any event likely to be reflective of the *appropriate regulator's* assessment of the *liquidity risk* profile of the entities on which liquidity support is permitted.

12.8.20 **G** In addition, the *appropriate regulator* will also wish to understand in relation to any *group* entity on which an applicant *firm* proposes to rely for liquidity support the legal structure of the *group* and the extent to which that structure, or any relevant legal principles, may restrict the provision of timely liquidity support in appropriate amounts to the applicant *firm* when required.

Ongoing requirements

12.8.21 **G** The *appropriate regulator* also anticipates that an *intra-group liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:

- (1) the *appropriate regulator* receiving annual confirmation from the authority that regulates an applicant *firm's parent undertaking* for liquidity purposes that it remains satisfied with the arrangements in respect of that *undertaking* for liquidity supervision and their operation; and
- (2) an annual meeting with the same authority to discuss liquidity supervision of that *undertaking*.

Whole-firm liquidity modification: general

12.8.22 **G** In relation to an *incoming EEA firm* or *third country BIPRU firm*, the *overall liquidity adequacy rule* provides that, for the purpose of complying with that *rule*, a *firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in ■ BIPRU 12.2.3 R. Those conditions seek to ensure that a *firm* of this kind has a reserve of liquidity for operational purposes that is under the control of, and available for use by, that *firm's UK branch*. Further *guidance* is given in ■ BIPRU 12.5.39 G in relation to the local operational liquidity reserve. In addition, ■ BIPRU 12.9.10 G explains how the *appropriate regulator* will approach the giving of *individual liquidity guidance* to an *incoming EEA firm* or *third country BIPRU firm*. The *appropriate regulator* does, however, recognise that there are circumstances in which it may be appropriate for a *UK branch* to rely on the availability of liquidity resources from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind for its *UK branch* may apply for a modification to the *overall liquidity adequacy rule* where it considers that the statutory tests in section 138A of the Act are met.

12.8.23 **G** Although an *incoming EEA firm* or *third country BIPRU firm* may apply to modify the *overall liquidity adequacy rule* and other *rules* in ■ BIPRU 12, in relation to its *UK branch*, the *appropriate regulator* anticipates that many such *firms* will wish to apply for a modification in the form which the *appropriate regulator* defines as a *whole-firm liquidity modification*. In the *appropriate regulator's* view, a modification to the *overall liquidity adequacy rule* for a *firm* of this kind will tend to be appropriate where an applicant *firm* manages its liquidity on an integrated, whole-*firm* basis. Where that is the case, and having regard to the matters outlined in the *guidance* in this section, the *appropriate regulator* is likely to consider it more appropriate for the *UK branch* to be subject, in large part, to the same regulatory liquidity regime which applies to the rest of the *firm*. In granting a *whole-firm liquidity modification* the *appropriate regulator* therefore recognises that in certain circumstances a *UK branch* can have adequate liquidity

resources in circumstances where the liquidity resources upon which the *firm* seeks to rely do not meet the criteria set out in ■ BIPRU 12.2.3 R.

12.8.24 **G** Accordingly, a *whole-firm liquidity modification* envisages:

- (1) a modification to the *overall liquidity adequacy rule* so as to permit reliance by the *firm*, in relation to its *UK branch*, on liquidity resources wherever held in the *firm* for the purposes of meeting that *rule*; and
- (2) a *waiver* of the remainder of the substantive *rules* in ■ BIPRU 12, with the effect that the *UK branch* of the applicant *firm* becomes subject for the purpose of day-to-day liquidity supervision to the liquidity regime of the *Home State regulator* or *third country competent authority* in question.

12.8.25 **G** The effect of a *whole-firm liquidity modification* is that the *appropriate regulator* will in its supervision of the liquidity of the *UK branch* place reliance on the liquidity regime of the *Home State regulator* or *third country competent authority* in question. The *appropriate regulator* will wish to ensure that it has adequate data at the time of consideration of the *whole-firm liquidity modification* application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of the *firm* as a whole. It is therefore likely that an applicant *firm* will be asked to provide as part of its application relevant liquidity *data items* covering the liquidity position of the *firm* as a whole. It is also likely that an applicant *firm* will be asked, as part of its application, to provide an appropriately detailed account as to the activities conducted by its *UK branch* as at the date of the application. In addition, the *appropriate regulator* anticipates that an applicant *firm* will be asked to ensure as a condition of the modification, if granted, that it provides relevant *data items*, covering the *whole-firm* liquidity position, to the *appropriate regulator* on a continuing basis at a frequency to be determined as part of the *appropriate regulator's* consideration of the applicant *firm's* case but in any event likely to be reflective of the *appropriate regulator's* assessment of the *liquidity risk* profile of the *firm*.

Consideration of an application for a whole-firm liquidity modification

12.8.26 **G** In relation to the *Home State regulator's* or *third country competent authority's* regime of liquidity regulation, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to be satisfied that:

- (1) the regime in question delivers outcomes as regards the regulation of the applicant *firm's* *liquidity risk* that are broadly equivalent to those intended by this chapter; and
- (2) there is clarity as to any legal constraints imposed by the *Home State regulator* or *third country competent authority* on the provision of liquidity by a *firm* to its *UK branch*, as well as the potential for such restrictions to be imposed in the future.

- 12.8.27 **G** In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to have reached agreement with the *Home State regulator* or *third country competent authority* in a number of areas, including agreement that:
- (1) it will notify the *appropriate regulator* promptly of any material or persistent breaches by that *firm* of its liquidity rules, or of risks that such breaches are imminent;
 - (2) it is satisfied with the adequacy of the arrangements in place for *firm-wide liquidity risk* management;
 - (3) it is satisfied as to the adequacy of that *firm's* liquidity resources including the size and quality of its liquid assets buffer;
 - (4) it does not object to any undertakings given by that *firm* in respect of its *UK branch* to ensure that the *branch* has adequate liquidity resources; and
 - (5) it will have due regard to the views of the *appropriate regulator* in its supervision of that *firm's* liquidity position.

- 12.8.28 **G** In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to have reached agreement with that *firm* in a number of areas, including agreement that:
- (1) it will make available liquidity resources at all times to its *UK branch* if needed;
 - (2) it will make available to the *appropriate regulator* information in an appropriate format on *firm-wide* liquidity;
 - (3) it will notify the *appropriate regulator* at the same time as it notifies the *Home State regulator* or *third country competent authority* of any issues relevant to the liquidity position of its *UK branch* or compliance with the rules to which it is subject in respect of its liquidity (including with the terms of its *whole-firm liquidity modification*);
 - (4) its *UK branch* will continue to be fully integrated with the rest of the *firm* for *liquidity risk* management purposes; and
 - (5) it will participate in the *appropriate regulator's* thematic supervisory work in relation to liquidity when requested to do so by the *appropriate regulator*.

Ongoing requirements

- 12.8.29 **G** The *appropriate regulator* also anticipates that a *whole-firm liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:
- (1) the *appropriate regulator* receiving annual confirmation from the *Home State regulator* or *third country competent authority* that it

remains satisfied with the arrangements in respect of that *firm* for liquidity supervision and their operation;

- (2) an annual meeting with the *Home State regulator* or *third country competent authority* to discuss liquidity supervision of that *firm*;
- (3) the *appropriate regulator* receiving annual confirmation from the *firm*, approved by its *governing body*, that it remains in full compliance with the terms of its *whole-firm liquidity modification*; and
- (4) as at the first anniversary of the grant of the *whole-firm liquidity modification* and on each anniversary thereafter, the *appropriate regulator* receiving from the *firm*:
 - (a) an appropriate account of the activities conducted by the *UK branch* over the previous year; and
 - (b) a copy of the *firm's* latest business plan where this differs from that previously sent to the *appropriate regulator* after grant of its *whole-firm liquidity modification*.

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G In determining the appropriate duration of a *whole-firm liquidity modification*, the *appropriate regulator* will have regard to the role and importance of the *UK branch* in question in the *UK financial system*. In some cases, the *appropriate regulator* may take the view that a *whole-firm liquidity modification*, covering a *UK branch* whose role and importance in the *UK financial system* are significant, ought to be reviewed more regularly than one granted in respect of a less systemically significant *branch*. The *appropriate regulator* will consider this issue in determining the appropriate duration of such a modification. The *appropriate regulator* is also likely to consider it appropriate in modifications other than those of short duration to reflect in the terms of the modification representations made either in an applicant *firm's* business plan or direct to the *appropriate regulator* as part of the application process, but in either case as to the expected nature and size of the *UK branch's* activities over the course of the duration of the modification. Where requirements are included in a modification in relation to these matters, a *firm* that anticipates that it will breach those requirements will need to apply in advance of any such event for a variation to its then existing *whole-firm liquidity modification*. In considering an application to vary, the *appropriate regulator* will consider afresh whether the tests in section 138A of the Act continue to be met for the grant of a *whole-firm liquidity modification* to the *firm* in question.