

Chapter 2

The threshold conditions

2.2 Location of offices

2.2.1 UK [deleted]

Paragraph 2B of Schedule 6 to the Act

- 2.2.1A UK
- (1) Unless sub-paragraph (3), (4)(a) or (7) applies, if A is a body incorporated in the United Kingdom -
 - (a) A's head office, and
 - (b) if A has a registered office, that office, must be in the United Kingdom.
 - (2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.
 - (3) If-
 - (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
 - (b) A is a body corporate with no registered office, and
 - (c) A's head office is in the United Kingdom,A must carry on business in the United Kingdom.
 - (4) If A is seeking to carry on, or is carrying on, an insurance distribution activity-
 - (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
 - (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A's residence is resident in the United Kingdom.
 - (5) "Insurance distribution activity" means any of the following activities-
 - (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in paragraph (a) to (d).

- (6) Sub-paragraph (5) must be read with-
 - (a) section 22
 - (b) any relevant order under that section; and
 - (c) Schedule 2.

- (7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.

- 2.2.1B** G Paragraph 2B of Schedule 6 to the *Act* sets out the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

- 2.2.1C** G The *FCA* is not responsible for the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

- 2.2.2** G Paragraph 2B(1) of Schedule 6 to the *Act* implements article 7(1)(d) of the *UCITS Directive*, paragraphs 2B(1) to 2B(23) of Schedule 6 to the *Act* implement article 5(4) of *MiFID*, paragraph 2B(4) of Schedule 6 to the *Act* implements article 2(1)(10) of the *IDD* and paragraph 2B(7) of Schedule 6 to the *Act* implements article 8(1)(e) of *AIFMD*, although the *Act* extends the *threshold condition* set out in paragraph 2B of Schedule 6 of the *Act* to *authorised persons* that are not *PRA-authorised persons* who are outside the scope of these *Single Market Directives*.

- 2.2.3** G Neither the *UCITS Directive*, *MiFID*, the *IDD*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:
 - (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and
 - (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).

2.3 Effective supervision

2.3.1 UK [deleted]

Paragraph 2C of Schedule 6 to the Act

- 2.3.1A UK
- (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
 - (b) the complexity of any products that A provides or will provide in carrying on those activities;
 - (c) the way in which A's business is organised;
 - (d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;
 - (e) whether A is subject to consolidated supervision required under any of the relevant directives;
 - (f) if A has close links with another person ("CL")-
 - (i) the nature of the relationship between A and CL;
 - (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not the *UK* ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.
- (1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-
- (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.
- (2) A has close links with CL if-
- (a) CL is a parent undertaking of A;
 - (b) CL is a subsidiary undertaking of A;

- (c) CL is a parent undertaking of a subsidiary undertaking of A;
- (d) CL is a subsidiary undertaking of a parent undertaking of A;
- (e) CL owns or controls 20% or more of the voting rights or capital of A; or
- (f) A owns or controls 20% or more of the voting rights or capital of CL.

2.3.1B G Paragraph 2C of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.3.1BA G For the purposes of paragraph 2C (1A) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ **COND 1.1A.5A G**.

Paragraph 3B of Schedule 6 to the Act

- 2.3.1C** UK
- (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
 - (a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;
 - (b) the complexity of any products that B provides or will provide in carrying on those activities;
 - (c) the way in which B’s business is organised;
 - (d) if B is a member of a group, whether membership of the group is likely to prevent the FCA’s effective supervision of B;
 - (e) whether B is subject to consolidated supervision required under any of the relevant directives;
 - (f) if B has close links with another person (“CL”)-
 - (i) the nature of the relationship between B and CL;
 - (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of B; and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not the *UK* (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of B.
 - (2) B has close links with CL if-
 - (a) CL is a parent undertaking of B;
 - (b) CL is a subsidiary undertaking of B;
 - (c) CL is a parent undertaking of a subsidiary undertaking of B;
 - (d) CL is a subsidiary undertaking of a parent undertaking of B;
 - (e) CL owns or controls 20% or more of the voting rights or capital of B; or

(f) B owns or controls 20% or more of the voting rights or capital of CL.

- 2.3.1D** G Paragraph 3B of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.
- 2.3.1E** G The guidance in COND 2.3 should be read as applying to both paragraph 2C of Schedule 6 of the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3B of Schedule 6 of the *Act*.
- 2.3.1F** G *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing effective supervision under its own *threshold conditions*. Paragraphs 4F and 5F of Schedule 6 to the *Act* set out the effective supervision *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraphs 4F and 5F of Schedule 6 to the *Act*.
- 2.3.2** G Paragraphs 2C and 3B of Schedule 6 to the *Act* implements requirements of the *Single Market Directives*, but the *Act* extends this condition to *firms* from outside the *EEA* and other *firms* which are outside the scope of the *Single Market Directives*.
- 2.3.3** G In assessing the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, factors which the *FCA* will take into consideration include, among other things, whether:

 - (1) it is likely that the *FCA* will receive adequate information from the *firm*, and those *persons* with whom the *firm* has *close links*, to enable it to determine whether the *firm* is complying with the requirements and standards under the *regulatory system* for which the *FCA* is responsible and to identify and assess the impact on its *statutory objectives*; this will include consideration of whether the *firm* is ready, willing and organised to comply with *Principle 11* (Relations with regulators and the *rules* in *SUP* on the provision of information to the *FCA*;
 - (2) the structure and geographical spread of the *firm*, the *group* to which it belongs and other *persons* with whom the *firm* has *close links*, might hinder the provision of adequate and reliable flows of information to the *FCA*; factors which may hinder these flows include the fact there may be branches or connected *companies* in territories which supervise *companies* to a different standard or territories with laws which restrict the free flow of information, although the *FCA* will consider the totality of information available from all sources; and
 - (3) [deleted]

- (4) in respect of a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity*, it is possible to assess with confidence the overall financial position of the *group* at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a *group*, if companies in the same *group* as the *firm* have different financial years and accounting dates and if they do not share common auditors.

2.3.4 G [deleted]

2.3.5 G [deleted]

Meaning of "parent undertaking" and "subsidiary undertaking"

2.3.6 G (1) Section 420(1) of the *Act* (Parent and subsidiary undertaking) states that, except in relation to an *incorporated friendly society*, '*parent undertaking*' and '*subsidiary undertaking*' have the same meaning as in the Companies Acts (see section 1162 of, and schedule 7 to, the Companies Act 2006). These are the cases referred to in ■ COND 2.3.7 G (1)(a) to ■ (f).

(2) Section 420(2) of the *Act* supplements these definitions in two ways; these are the cases referred to in ■ COND 2.3.7 G (1)(g) and ■ (h).

(3) Paragraph 1A of Schedule 6 to the *Act* extends the meaning of '*subsidiary undertaking*' for the purposes of the *threshold conditions* to all the cases in articles 1(1) and (2) of the *Seventh Company Law Directive* in which one *undertaking* may be a *subsidiary* of another *undertaking* (see ■ COND 2.3.11 G).

2.3.7 G (1) For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, and except in relation to an *incorporated friendly society*, an *undertaking* is a *parent undertaking* of another *undertaking* (a *subsidiary undertaking*) if any of the following apply to it:

- (a) it holds a majority of the voting rights in the *subsidiary undertaking*; or
- (b) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of its board of *directors*; or
- (c) it has the right to exercise a dominant influence over the *subsidiary undertaking* through:
 - (i) provisions contained in the *subsidiary undertaking's* memorandum or articles; or
 - (ii) a control contract; or
- (d) it is a member of the *subsidiary undertaking* and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the *subsidiary undertaking*; or
- (e) it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the *subsidiary undertaking* are managed on a unified basis; or

<p>(f) it is a <i>parent undertaking</i> of a <i>parent undertaking</i> of the <i>subsidiary undertaking</i>; or</p> <p>(g) it is an individual and would be a <i>parent undertaking</i> if it were an <i>undertaking</i>.</p> <p>(h) [deleted]</p> <p>(2) [deleted]</p>	<p>2.3.8</p>	<p>G</p>	<p>(1) In relation to ■ COND 2.3.7 G (1)(b) and ■ (d), an <i>undertaking</i> is treated as a member of another <i>undertaking</i> if any of its <i>subsidiary undertakings</i> is a member of that <i>undertaking</i>, or if any shares in that other <i>undertaking</i> are held by a <i>person</i> acting on behalf of the <i>undertaking</i> or any of its <i>subsidiary undertakings</i>.</p> <p>(2) [deleted]</p> <p>(3) [deleted]</p>
<p>2.3.9</p>	<p>G</p>	<p>The provisions of Schedule 7 to the Companies Act 2006 (Parent and subsidiary undertakings: supplementary provisions) explain and supplement the provisions of section 1162 of the Companies Act 2006 (outlined in ■ COND 2.3.7 G (1)(a) to ■ (f)).</p>	
<p>2.3.10</p>	<p>G</p>	<p>Section 420(3) of the Act (Parent and subsidiary undertaking) states that an <i>incorporated friendly society</i> is a <i>parent undertaking</i> of another <i>body corporate</i> (a <i>subsidiary undertaking</i>) if it has the following relationship to it:</p> <p>(1) it holds a majority of the voting rights in the <i>subsidiary undertaking</i>; or</p> <p>(2) it is a member of the <i>subsidiary undertaking</i> and has the right to appoint or remove a majority of the <i>subsidiary undertaking's</i> board of <i>directors</i>; or</p> <p>(3) it is a member of the <i>subsidiary undertaking</i> and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it.</p>	
<p>2.3.11</p>	<p>G</p>	<p>For the purposes of the <i>threshold conditions</i> set out in paragraphs 2C and 3B of Schedule 6 to the Act, an <i>undertaking</i> is a <i>subsidiary undertaking</i> of another <i>undertaking</i> if:</p> <p>(1) the other undertaking (its parent) is a member of the <i>undertaking</i>;</p> <p>(2) a majority of the <i>undertaking's</i> board of <i>directors</i> who have held office during the financial year and during the preceding financial year have been appointed solely as a result of the exercise of the parent's voting rights; and</p>	

- (3) no one else is the *parent undertaking* of the *undertaking* under
■ COND 2.3.7 G (1)(a) or ■ COND 2.3.10 G (1).

2.3.11A **G** Paragraphs 2C(2)(e) and (f) and 3B(2)(e) and (f) of Schedule 6 to the Act reflect legislation initially introduced in the *Post-BCCI Directive*, which defines close links, in part, by reference to participation. Recital 5 of the *Post-BCCI Directive* gives further guidance on what is meant by 'participation' for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

2.3.12 **G** The *guidance* in ■ COND 2.3 is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 2006, the Friendly Societies Act 1992 and the *Seventh Company Law Directive*, or obtaining appropriate professional advice.

2.4 Appropriate resources

2.4.1 UK [deleted]

Paragraph 2D of Schedule 6 to the Act

2.4.1A UK

- (1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A has appropriate resources include-
 - (a) the nature and scale of the business carried on, or to be carried on, by A;
 - (b) the risks to the continuity of the services provided by, or to be provided by, A; and
 - (c) A's membership of a group and any effect which that membership may have.
- (3) Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-
 - (a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and
 - (b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.
- (3A) Where the only regulated activities that A carries on, or seeks to carry on, are-
 - (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A,
A has adequate financial resources if A is capable of meeting A's debts as they fall due.
- (4) The matters which are relevant in determining whether A has appropriate non-financial resources include-
 - (a) the skills and experience of those who manage A's affairs;
 - (b) whether A's non-financial resources are sufficient to enable A to comply with -

- (i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;
- (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

2.4.1B G Paragraph 2D of Schedule 6 to the *Act* sets out the appropriate resources *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.4.1BA G For the purposes of paragraph 2D (3A) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ [COND 1.1A.5A G](#).

Paragraph 3C of Schedule 6 to the Act

2.4.1C UK

- (1) The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.
- (2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include-
 - (a) the nature and scale of the business carried on, or to be carried on, by B;
 - (b) the risks to the continuity of the services provided by, or to be provided by, B;
 - (c) B's a member of a group and any effect which that membership may have;
 - (d) the skills and experience of those who manage B's affairs;
 - (e) whether B's non-financial resources are sufficient to enable B to comply with-
 - (i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions; or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

2.4.1D G Paragraph 3C of Schedule 6 to the *Act* sets out the appropriate non-financial resources *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.4.1E G The guidance in ■ [COND 2.4](#) should be read as applying to both paragraph 2D of Schedule 6 of the *Act* and, as far as relevant to the discharge by the *FCA* of its functions in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity* under the *Act*, paragraph 3C of Schedule 6 of the *Act*.

- 2.4.1F** **G** As the *threshold condition* set out in paragraph 3C of Schedule 6 to the Act does not relate to financial resources, the *guidance* in **COND 2.4** relating to appropriate financial resources only applies to the FCA's assessment of the *threshold condition* set out in paragraph 2D of Schedule 6 of the Act.
- 2.4.1G** **G** Firms carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is responsible for assessing their financial resources. Paragraphs 4D and 5D of Schedule 6 to the Act contain the *threshold conditions* relating to financial resources which are relevant to the discharge by the *PRA* of its functions under the Act in relation to firms carrying on, or seeking to carry on, a *PRA-regulated activity* (in addition to additional non-financial resources *threshold conditions* which are also relevant to the discharge by the *PRA* of its functions). For the avoidance of doubt, this *guidance* does not apply to *threshold conditions* set out in paragraphs 4D and 5D of Schedule 6 to the Act.
- 2.4.2** **G**
- (1) [deleted]
 - (2) In this context, the FCA will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a *PRA-regulated activity*), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
 - (2A) Paragraph 1A(2) of Schedule 6 to the Act provides that "non-financial resources" of a firm for the purposes of the *threshold conditions* include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.
 - (3) High level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the *threshold conditions* set out in paragraphs 2D and 3C to Schedule 6 of the Act. For a *Solvency II firm*, the *PRA Rulebook: Solvency II firms: Conditions Governing Business and Solvency II Regulation (EU) 2015/35 of 10 October 2014* also contain systems and control requirements and the FCA will take these into account.
 - (4) Detailed financial resources requirements are in the relevant section of the Prudential Standards part of the *FCA Handbook*, including specific provisions for particular types of *regulated activity*. The FCA will consider whether firms (other than firms carrying on, or seeking to carry on, *PRA-regulated activities*) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of the *threshold condition* set out in paragraph 2D of Schedule 6 to the Act.
- 2.4.3** **G**
- (1) [deleted]
 - (2) Although it is the firm that is being assessed, the FCA may take into consideration the impact of other members of the firm's group on the adequacy of its resources, where relevant to the discharge of the FCA's functions. For example, in relation to a firm other than a firm carrying on, or seeking to carry on, a *PRA-regulated activity*, the FCA

may assess the consolidated solvency of the *group*. The *FCA's* approach to the consolidated supervision of such a *firm*, and its *group*, is in the relevant part of the Prudential Standards part of the *FCA Handbook*.

2.4.4

G

- (1) [deleted]
- (2) Relevant matters to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* may include but are not limited to:
 - (a) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*), whether there are any indications that the *firm* may have difficulties if the application is granted, at the time of the grant or in the future, in complying with any of the *FCA's* prudential *rules* (see the relevant part of the Prudential Standards part of the *FCA Handbook*);
 - (b) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*, whether there are any indications that the *firm* will not be able to meet its debts as they fall due;
 - (c) whether there are any implications for the adequacy of the *firm's* resources arising from the history of the *firm*; for example, whether the *firm* has:
 - (i) been adjudged bankrupt; or
 - (ii) entered into liquidation; or
 - (iii) been the subject of a receiving or administration order; or
 - (iv) had a bankruptcy or winding-up petition served on it; or
 - (v) had its estate sequestrated; or
 - (vi) entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so; or
 - (vii) within the last ten years, failed to satisfy a judgment debt under a court order, whether in the *United Kingdom* or elsewhere;
 - (d) whether the *firm* has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business (see ■ COND 2.4.6 G) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times. For a *Solvency II firm*, the PRA Rulebook: Solvency II firms: Conditions Governing Business and *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 also contain systems and control requirements on these matters and the *FCA* will take these into account; and
 - (e) whether the *firm* has conducted enquiries into the financial services sector in which it intends to conduct business that are sufficient to satisfy itself that:
 - (i) it has access to adequate capital, by reference to the *FCA's* prudential requirements, to support the business including any losses which may be expected during its start-up period

(in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*); and

(ii) client money, *deposits*, *custody assets* and *policyholders'* rights will not be placed at risk if the business fails; and

(f) whether the resources of the *firm* are commensurate with the likely risks it will face.

(3) [deleted]

(4) [deleted]

2.4.5 **G** [deleted]

2.4.6 **G** (1) [deleted]

(2) [deleted]

(3) [deleted]



2.5 Suitability

2.5.1 UK [deleted]

Paragraph 2E to Schedule 6 of the Act

- 2.5.1A UK
- (1) A must be a fit and proper person having regard to all the circumstances, including-
 - (a) A’s connection with any person;
 - (b) the nature (including the complexity) of any regulated activity that A carries on or seeks to carry on;
 - (c) the need to ensure that A’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
 - (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
 - (e) whether those who manage A’s affairs have adequate skills and experience and act with probity;
 - (f) whether A’s business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and
 - (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

2.5.1B G Paragraph 2E of Schedule 6 to the *Act* sets out the suitability *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not consist of or include a *PRA-regulated activity*.

Paragraph 3D to Schedule 6 of the Act

- 2.5.1C UK
- (1) B must be a fit and proper person, having regard to the operational objectives of the FCA.
 - (2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include-
 - (a) B’s connection with any person;

- (b) the nature (including the complexity) of any regulated activity that B carries on or seeks to carry on;
- (c) the need to ensure that B's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether B has complied and is complying with requirements imposed by the FCA in the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage B's affairs have adequate skills and experience and act with probity; and
- (f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

2.5.1D **G** Paragraph 3D of Schedule 6 to the *Act* sets out the suitability *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.5.1E **G** The *guidance* in **COND 2.5** should be read as applying to both paragraph 2E of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3D of Schedule 6 of the *Act*.

2.5.1F **G** *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing suitability under its own *threshold conditions*. Paragraphs 4E and 5E of Schedule 6 to the *Act* set out the suitability *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraph 4E and 5E of Schedule 6 to the *Act*.

2.5.2 **G**

- (1) [deleted]
- (2) The *FCA* will also take into consideration anything that could influence a *firm's* continuing ability to satisfy the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act*. Examples include the *firm's* position within a *UK* or international *group*, information provided by *overseas regulators* about the *firm*, and the *firm's* plans to seek to vary its *Part 4A permission* to carry on additional *regulated activities* once it has been granted that *permission*.

2.5.3 **G**

- (1) The emphasis of the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 of the *Act* is on the suitability of the *firm* itself. The suitability of each *person* who performs a *controlled function* will be assessed by the *FCA* and/or the *PRA*, as appropriate, under the *approved persons* regime (in relation to an *FCA-approved person*, see

■ SUP 10A (FCA Approved Persons in Appointed Representatives),
 ■ SUP 10C (FCA senior managers regime for approved persons in SMCR firms) and *FIT*). In certain circumstances, however, the *FCA* may consider that the *firm* is not suitable because of doubts over the individual or collective suitability of *persons* connected with the *firm*.

(2) [deleted]

(3) [deleted]

2.5.4

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(1) [deleted]

(2) Examples of the kind of general considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act* include, but are not limited to, whether the *firm*:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

(3) [deleted]

(4) [deleted]

2.5.5

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[deleted]

2.5.6

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Examples of the kind of particular considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* include, but are not limited to, whether:

(1) the *firm* has been open and co-operative in all its dealings with the *FCA* and any other regulatory body (see *Principle 11* (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the *regulatory system* (such as the detailed requirements of *SYSC* and, in relation to a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity* only, the Prudential Standards part of the *FCA Handbook*) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the *regulated activities* which the *firm* has *permission*, or is seeking *permission*, to carry on;

(1A) the *firm* has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the *FCA* is responsible under the *regulatory system*;

(2) the *firm* has been convicted, or is connected with a *person* who has been convicted, of any criminal offence; this must include, where provided for by the *Rehabilitation Exceptions Orders* to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of

Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, *money laundering*, market manipulation and *insider dealing*, whether or not in the *United Kingdom*;

- (3) the *firm* has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the *FCA*, the *Society of Lloyd's* or by other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, professional bodies or government bodies or agencies; the *FCA* will, however, take both the nature of the *firm's* involvement in, and the outcome of, any investigation or enforcement proceedings into account in determining whether it is a relevant matter;
- (4) the *firm* has contravened, or is connected with a *person* who has contravened, any provisions of the *Act* or any preceding financial services legislation, the *regulatory system* or the rules, regulations, statements of principles or codes of practice (for example the *Society of Lloyd's* Codes) of other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, professional bodies, or government bodies or agencies or relevant industry standards (such as the Non-Investment Products Code); the *FCA* will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a *firm* has flouted or ignored a particular code);
- (5) the *firm*, or a *person* connected with the *firm*, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the *FCA* considers such a refusal relevant will depend on the circumstances;
- (6) [deleted]
- (7) the *firm* has put in place procedures which are reasonably designed to:
 - (a) ensure that it has made its *employees* aware of, and compliant with, those requirements and standards under the *regulatory system* that apply to the *firm* for which the *FCA* is responsible and the *regulated activities* for which it has, or will have *permission*;
 - (b) ensure that its *approved persons* and the rest of its *conduct rules staff* are aware of those requirements and standards under the *regulatory system* applicable to them, whether or not they are employed by the *firm*;
 - (c) determine that its *employees* are acting in a way compatible with the *firm* adhering to those requirements and standards; and
 - (d) determine that its *approved persons* and the rest of its *conduct rules staff*, are adhering to those requirements and standards;
- (8) the *firm* or a *person* connected with the *firm* has been dismissed from employment or a position of trust, fiduciary relationship or similar or

- has ever been asked to resign from employment in such a position; whether the *FCA* considers a resignation to be relevant will depend on the circumstances, for example if a *firm* is asked to resign in circumstance that cast doubt over its honesty or integrity;
- (9) the *firm* or a *person* connected with the *firm* has ever been disqualified from acting as a *director*;
 - (10) the *governing body* of the *firm* is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the *firm's regulated activities*;
 - (11) where appropriate, the *governing body* of the *firm* includes non-executive representation, at a level which is appropriate for the control of the *regulated activities* proposed, for example, as members of an audit committee;
 - (12) those *persons* who perform *controlled functions* under certain *arrangements* entered into by the *firm* or its contractors (including *appointed representatives* or, where applicable, *tiered agents*) act with due skill, care and diligence in carrying out their *controlled function* (see ■ APER 4.2 (Statement of Principle 2) or ■ COCON 2.1.2R or managing the business for which they are responsible (see ■ APER 4.7 (Statement of Principle 7) or ■ COCON 2.2.2R, as applicable);
 - (13) the *firm*, or a *person* connected with the *firm*, has been a *director*, *partner* or otherwise concerned in the management of a *company*, *partnership* or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection;
 - (14) the *governing body* of the *firm* is organised in a way that enables it to address and control the *regulated activities* of the *firm*, including those carried on by *managers* to whom particular functions have been delegated;
 - (15) the *firm* has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities;
 - (16) the *firm* has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed;
 - (17) the *firm* has in place appropriate systems and controls against financial crime, including, for example, money laundering;
 - (18) in the case of a *firm* that carries on insurance distribution activity:
 - (a) employees or other *persons* within its management structure who are responsible for the *firm's insurance distribution activities*; and
 - (b) employees or other *persons* directly involved in the carrying on of the *firm's insurance distribution activities*; and
 - (ba) employees or other *persons* responsible for the supervision of a relevant employee acting in the capacity as set out in (b),

demonstrate the appropriate knowledge and ability in order to complete their tasks and perform their duties adequately (see *competent employee rule* and ■ SYSC 28 (Insurance distribution: specific knowledge; ability and good repute requirements)); and

(c) all the persons in the *firm's* management structure and any staff directly involved in insurance distribution activity are of good repute (see ■ SYSC 28.3 (Good repute));

natural persons working in the *firm*, responsible for ancillary *insurance distribution activities* are of good repute (see ■ SYSC 28.3.3R); and

(19) where appropriate, the *firm* has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted.

2.5.7

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[deleted]

2.7 Business model

Paragraph 2F to Schedule 6 of the Act

- 2.7.1** UK (1) A’s business model (that is, A’s strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include-
- (a) whether the business model is compatible with A’s affairs being conducted, and continuing to be conducted, in a sound and prudent manner;
 - (b) the interests of consumers;
 - (c) the integrity of the UK financial system.
- (3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-
- (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

2.7.2 G Paragraph 2F of Schedule 6 to the *Act* sets out the business model *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.7.2A G For the purposes of paragraph 2F(3) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ COND 1.1A.5A G.

Paragraph 3E to Schedule 6 of the Act

2.7.3 UK B’s business model (that is, B’s strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA’s operational objectives.

2.7.4 G Paragraph 3E of Schedule 6 to the *Act* sets out the business model *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

- 2.7.5** **G** The *guidance* in **COND 2.7** should be read as applying to both paragraph 2F of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3E of Schedule 6 of the *Act*.
- 2.7.6** **G** *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* states in its Approach Documents that analysis of such *firms'* business models will form an important part of the *PRA's* supervisory approach. For the avoidance of doubt, this guidance does not apply to the *PRA's* own assessment of the *firms'* business models.
- 2.7.7** **G** In assessing whether the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* are satisfied, the *FCA* may consider all matters that might affect the design and execution of a *firm's* business model, taking into account the nature, scale and complexity of a *firm's* business.
- 2.7.8** **G** In deciding how they will satisfy and continue to satisfy the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act*, *firms* should consider matters including (but not limited to) the following:
- (1) the assumptions underlying the *firm's* business model and justification for it;
 - (2) the rationale for the business the *firm* proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
 - (3) the needs of and risks to *consumers*;
 - (4) the expectations of stakeholders, for example, shareholders and regulators;
 - (5) the products and services being offered and product strategy;
 - (6) the governance and controls of the *firm* and of any member of its *group* (if appropriate);
 - (7) the growth strategy and any risks arising from it;
 - (8) any diversification strategies; and
 - (9) the impact of the external macroeconomic and business environment.
- 2.7.9** **G** *Firms* should consider the manner in which they intend to bring their business model into operation. This plan could, for example, include matters such as procurement, outsourcing, and recruitment.
- 2.7.10** **G** *Firms* should consider scenarios which may negatively impact on the *firm's* business model with a view to ensuring the sustainability of the *firm* and, further, to consider the vulnerability of the business model to specific events and the risks and consequences that might arise. Where appropriate, this might include reverse stress-testing (see SYSC 20 'Reverse stress testing'). A *firm* should put in place a credible plan to minimise the risks that it identifies

from, or in relation to, its business model and a contingency plan for dealing with risks that have crystallised.

2.7.11

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Firms should ensure that any adjustments to its business model:

- (1) are approved at an appropriate level in the business;
- (2) are considered in the light of any potential risks, impacts and consequences of the proposed changes; and
- (3) appropriately take into account the needs of and risks to *clients* and relevant *consumers*.

2.7.12

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The *FCA's* assessment of a *firm's* satisfaction of the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* will not necessarily be limited to a *firm's regulated activities* if the *FCA* believes the *firm's* other business activities, if any, may impact on a *firm's regulated activities*.

