

Chapter 11

Recovery and resolution



11.5 Intra-group financial support

Application

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This section applies to:

- (1) a *firm* that is an *RRD group member*;
- (2) a *qualifying parent undertaking* that is an *RRD group member*; and
- (3) a *qualifying parent undertaking* that is a *mixed activity holding company* of an *IFPRU 730k firm* in an *RRD group*.

Scope of financial support covered by IFPRU 11.5

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- (1) This section applies where an *RRD group member* gives, or proposes to give, *intra-group financial support* using an *RRD group financial support agreement*.
- (2) It does not apply to other sorts of *intra-group financial arrangements*, including funding arrangements and the operation of centralised funding arrangements.
- (3) It does not apply to financial support arrangements where none of the parties to the arrangement has infringed, or is likely to infringe, an *RRD early intervention condition*.
- (4) A *firm* or *qualifying parent undertaking* does not have to use an *RRD group financial support agreement* to give financial support to another *group member* that has infringed, or is likely to infringe, an *RRD early intervention condition*.
- (5) A *firm* or *qualifying parent undertaking* may give financial support on a case-by-case basis according to the *group policies*, if the support does not represent a risk for the whole *group*.

[Note: article 19(2) and (3) of *RRD*]

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RRD group financial support agreement

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An *RRD group financial support agreement* may:

- (1) cover one or more *subsidiaries* of the *group*; and

- (2) allow for financial support:
 - (a) from the *parent undertaking to subsidiaries*;
 - (b) from *subsidiaries to the parent undertaking*;
 - (c) between *subsidiaries* of the *group* that are party to the agreement; or
 - (d) between any combination of those *group* members.

[Note: article 19(5)(a) of RRD]

11.5.5 **G** An *RRD group financial support agreement* may allow for financial support:

- (1) in the form of:
 - (a) a loan;
 - (b) a guarantee;
 - (c) the use of assets as collateral; or
 - (d) any combination of those forms; and
- (2) in one or more transactions, including between the beneficiary of the support and a third party.

[Note: article 19(5)(b) of RRD]

11.5.6 **G** An *RRD group financial support agreement* may include a reciprocal agreement so the *group* member receiving financial support can give financial support to the *group* member agreeing to give financial support.

[Note: article 19(6) of RRD]

Approval of RRD group financial support agreements

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- (1) The following must apply to their *consolidating supervisor* for approval of any proposed *RRD group financial support agreement* or of any amendment to that agreement:
 - (a) a *firm* that is the *UK parent undertaking* of an *RRD group*;
 - (b) a *qualifying parent undertaking* that is the *UK parent undertaking* of an *RRD group*; and
 - (c) [deleted]
- (2) An application for the approval or amendment of an *RRD group financial support agreement* must:
 - (a) include the proposed *RRD group financial support agreement*; and
 - (b) identify the members in the *RRD group* that are intended to be a party to the agreement.

[Note: article 20(1) of RRD]

- 11.5.8 **G** The *FCA* will not approve an *RRD group financial support agreement* unless:
- (1) in its opinion, none of the parties has infringed an *RRD early intervention condition* or is likely to infringe one of those conditions in the near future;
 - (2) the agreement complies with the conditions for entering into an *RRD group financial support agreement* in ■ IFPRU 11.5.9 R to ■ IFPRU 11.5.12 R; and
 - (3) the terms of the proposed agreement are consistent with the conditions for giving financial support in ■ IFPRU 11.5.14 R.

[Note: articles 19(8), 20(1) and 20(3) of *RRD*]

Conditions for entering into an *RRD group financial support agreement*

- 11.5.9 **R** The parties to an *RRD group financial support agreement* must include:
- (1) one or more of the following:
 - (a) [deleted]
 - (b) a *UK parent institution*;
 - (c) a *financial holding company*;
 - (d) a *mixed financial holding company*;
 - (e) a *mixed activity holding company*; and
 - (2) one or more *subsidiaries* of the *group member* in (1) which is an *RRD institution* or a *financial institution*.

- 11.5.10 **R** Before entering into an *RRD group financial support agreement*, a *firm* or *qualifying parent undertaking* must ensure that:
- (1) the *RRD group financial support agreement* includes principles for the calculation of the consideration for any support made under it;
 - (2) these principles include a requirement that the consideration is set when the financial support is given;
 - (3) each party acts freely and in its own best interests in entering into the *RRD group financial support agreement*;
 - (4) each party acts in its own best interests in deciding the consideration for the financial support;
 - (5) each party giving financial support has full disclosure of relevant information from any party receiving financial support before deciding:
 - (a) the consideration for the support; and
 - (b) to give the support; and

(6) only the parties to the agreement can exercise any right, claim or action arising from the *RRD group financial support agreement*.

[Note: articles 19(7)(a) to (c) and 19(9) of *RRD*]

11.5.11 **R** When entering into the proposed *RRD group financial support agreement*, a firm or qualifying parent undertaking must ensure that none of the parties:

- (1) has infringed an *RRD early intervention condition*; or
- (2) is likely to infringe one of those conditions in the near future.

[Note: article 19(8) of *RRD*]

11.5.12 **R** (1) The principles for calculating the consideration for financial support do not need to take account of any anticipated temporary impact on market prices arising from events external to the *group*.

- (2) The consideration for financial support may take account of information that the party giving the support has, based on:
 - (a) the party giving support being in the same *group* as the party receiving the support; and
 - (b) the information not being available to the market.

[Note: article 19(7)(d) and (e) of *RRD*]

11.5.13 **G** In deciding whether a party is acting in its own best interests, the party may take account of any direct or indirect benefit that may accrue to a party as a result of giving financial support.

[Note: article 19(7)(b) of *RRD*]

Conditions for giving group financial support using an RRD group financial support agreement

11.5.14 **R** A firm or qualifying parent undertaking must not give financial support using an *RRD group financial support agreement* unless it is satisfied that:

- (1) there is a reasonable prospect that giving the support will significantly redress the financial difficulties of the *group* member receiving the support;
- (2) the support has the objective of preserving or restoring the financial stability of:
 - (a) the *group* as a whole; or
 - (b) any members of the *group*;
- (3) the support is in the interests of the *group* member giving the support;
- (4) the support is given on terms which meet the conditions in **IFPRU 11.5.9 R** to **IFPRU 11.5.12 R**;

- (5) there is a reasonable prospect, based on information available to the management body of the *group* member giving the support when it takes the decision to grant support, that:
 - (a) the consideration for the support will be paid;
 - (b) if the support is in the form of a loan, the *group* member receiving the support will reimburse the loan; and
 - (c) if the support is in the form of a guarantee or any form of security, the *group* member receiving the support will reimburse the amount of the guarantee or security if the guarantee or security is enforced;
- (6) the support will not jeopardise the liquidity or solvency of the *group* member giving the financial support;
- (7) the support will not create a threat to financial stability, in the *United Kingdom*;
- (8) the *group* member giving the support complies with the following when giving the support:
 - (a) the requirements of the *UK* provisions which implemented the articles of the *CRD* relating to capital and liquidity;
 - (b) any requirements imposed under the *UK* provisions which implemented article 104(2) (additional own funds requirements) of the *CRD*; and
 - (c) the requirements relating to large exposures in the *UK CRR* and the *UK* provisions which implemented the *CRD*;
- (9) the support will not cause the *group* member giving the support to infringe any of the requirements in (8) as a result of giving the financial support; and
- (10) the support will not undermine the resolvability of the *group* member giving the support.

[Note: article 23(1) of *RRD*]

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The *FCA* may modify or waive the requirements of ■ IFPRU 11.5.14R (8) if the conditions in section 138A (modification or waiver of rules) of the *Act* are met.

[Note: article 23(1)(g) of *RRD*]

Decision to give and receive group financial support using an RRD group financial support agreement

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A firm or qualifying parent undertaking intending to give financial support must ensure that:

- (1) its management body takes the decision to give *group* financial support using an *RRD group financial support agreement*; and
- (2) it is a reasoned decision that sets out:
 - (a) the objective of the proposed support; and

(b) how the support complies with the conditions for giving *group financial support* using an *RRD group financial support agreement* in ■ IFPRU 11.5.14 R.

11.5.16A **G** A firm or qualifying parent undertaking proposing to give financial support using an *RRD group financial support agreement* should also refer to articles 33 to 36 of the *RRD Regulation*

11.5.17 **R** A firm or qualifying parent undertaking intending to receive financial support must ensure that its management body takes the decision to accept the support using an *RRD group financial support agreement*.

[Note: article 24 of *RRD*]

Notice of intention to give financial support using an RRD group financial support agreement

11.5.18 **R** A firm or a qualifying parent undertaking intending to give financial support using an *RRD group financial support agreement* must ensure that its management body notifies:

- (1) its *competent authority*;
- (2) where different, its *consolidating supervisor*; and
- (3) where different, the *competent authority* of the *group member* receiving the financial support.
- (4) [deleted]

11.5.19 **R** A firm or a qualifying parent undertaking must:

- (1) send a notice of an intention to give financial support before the financial support is given; and
- (2) include in the notice:
 - (a) the reasoned decision referred to in ■ IFPRU 11.5.16 R of the management body of the *group member* intending to give the support; and
 - (b) details of the proposed financial support including a copy of the *RRD group financial support agreement*.

[Note: article 25(1) of *RRD*]

11.5.20 **R** An *RRD group member* may only give financial support using an *RRD group financial support agreement* if the *FCA* has:

- (1) agreed to the giving of the support with restrictions; or
- (2) agreed to the giving of the support without restrictions; or

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(3) not prohibited the support within five *business days* of receiving a notice of intention to give financial support.

[Note: article 25(2) and (5) of *RRD*]

A *firm* or *qualifying parent undertaking* must ensure it sends the decision of its *management body* to give financial support to:

- (1) its *competent authority*;
- (2) where different, its *consolidating supervisor*; and
- (3) where different, the *competent authority* of the *group* member receiving the support.
- (4) [deleted]

[Note: article 25(6) of *RRD*]

Disclosure of group financial support using an RRD group financial support agreement

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A *firm* or *qualifying parent undertaking* must:

- (1) make public:
 - (a) whether or not they have entered into an *RRD group financial support agreement*;
 - (b) a description of the general terms of any *RRD group financial support agreement*; and
 - (c) the names of the *group* members that are a party to the *RRD group financial support agreement*; and
- (2) update the information in (1) at least annually.

[Note: article 26 of *RRD*]

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Regulations 431 to 434 of the *UK CRR* apply to the disclosures in ■ IFPRU 11.5.22 R.

[Note: article 26(1) of *RRD*]