Chapter 13

Financial Resources Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

Application

13.1.1 R This chapter applies to a *firm* which is a *personal investment firm*.

(2) [deleted]

(3) [deleted]

Purpose

13.1.2 G This chapter amplifies *threshold condition* 2D (Appropriate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement and a minimum capital resources requirement. This chapter also amplifies *Principles* 3 and 4 which require a *firm* to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources by setting out capital resources for a *firm* according to the *regulated activity* or activities it carries on.

13.1.3 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day-to-day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of the *rules* in this section is also to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.

General capital resources and solvency requirements

13.1.4 R A *firm* must at all times:

(1) have and maintain capital resources at least equal to its relevant capital resources requirement; and

(2) be able to meet its liabilities as they fall due.

Capital resources: general accounting principles

13.1.4A R Unless a *rule* provides otherwise, a *firm* must:

(a) recognise an asset or liability; and

(b) measure the amount of that asset or liability,

by using the accounting principles it applies in preparing the *firm's* reporting form in (2).

(2) The accounting principles are referred to in the Notes for completion of the Retail Mediation Activities Return (*RMAR*) (under the heading "Accounting Principles") in SUP 16 Annex 18BG.

Requirement to hold professional indemnity insurance

13.1.5 R A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

(1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the *UK*

(2) a *person* of *equivalent status* in:

(a) a Zone A country;

(b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

[**Note:** articles 10(4) and 10(5) of the *IDD*

13.1.6 R [deleted]

Comparable guarantee

13.1.7 R (1) A *firm* is not required to effect or maintain professional indemnity insurance if a *bank*, *building society* or an *insurer* provides the *firm* with a comparable guarantee.

(2) If the *firm* is a member of a *group* in which there is a *bank*, *building society* or an *insurer*, the *firm's* comparable guarantee must be from that *bank*, *building society* or *insurer*.

(3) A comparable guarantee means an enforceable, written agreement on terms at least equal to those required by IPRU-INV 13.1.9R to 13.1.13R, as appropriate.

Relevant income

13.1.8 **R** The term "relevant income" in this section refers to all income received or receivable which is commission, brokerage, fees or other related income, whether arising from the *firm's permitted activities* or not, for the last accounting year prior to inception or renewal of the professional indemnity insurance policy ("the policy").

Policy terms

13.1.9 **R** The policy must incorporate terms which are appropriate and must make provision for cover in respect of any claim for loss or damage, for which the *firm* may be liable as a result of an act or omission by:

(1) the *firm;* or

(2) any *person* acting on behalf of the *firm* including *employees*, appointed representatives or its other *agents*.

Limits of indemnity

13.1.10 **R** If the *firm* is an *IDD insurance intermediary*, the appropriate minimum *limits of indemnity* per year are no lower than:

(1) EUR 1,300,380 for a single claim against the *firm*; and

(2) EUR 1,924,560 in the aggregate.

[Note: articles 10(4) and 10(5) of the *IDD*]

13.1.11 **R** [deleted]

13.1.12 **R** [deleted]

13.1.13 R If the *firm* is not an *IDD insurance intermediary*, then the following *limits of indemnity* apply:

(1) if the *firm* has relevant income of up to £3,000,000, no lower than £500,000 for a single *claim* against the *firm* and £500,000 in the aggregate; or

(2) if the *firm* has relevant income of more than £3,000,000, no lower than £650,000 for a single claim against the *firm* and £1,000,000 in the aggregate.

13.1.14 G [deleted]

13.1.15 R If a policy is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those denominated in euros.

13.1.16 G A *firm* should consider whether the overall cover is adequate taking account of 13.1.22G(2) and whether the *firm* should seek additional cover or legal expenses insurance. (Legal defence costs are costs of defence against claims that fall under the terms of the policy.)

13.1.17 G The cover provided by the policy should be wide enough to include the liability of the *firm*, its *appointed representatives*, its *tied agents*, *employees* and its agents for breaches under the *regulatory systems* or civil law. If the *firm* operates outside the *United Kingdom* then the policy should cover other regulatory requirements imposed under the laws of other countries in which the *firm* operates.

Policies providing for more than one firm

13.1.18 R If the *policy* provides cover to more than one *firm* then:

(1) The relevant income for calculating the limits of indemnity is that of all the *firms* named in the policy combined;

(2) each *firm* named in the policy must have the benefit of the minimum *limits of indemnity* as required in this section; and

(3) each *firm* named in the policy must notify the *FCA* if the aggregate cover in the policy falls below the minimum *limits of indemnity*.

Limits of indemnity – additional requirements

13.1.19 R In addition to the specific requirements in IPRU(INV) 13.1.9R to IPRU(INV) 13.1.13R

, the policy must make provision for the following:

(1) for a *firm* with relevant income of more than £10,000,000, the aggregate limit identified in the table below:

Relevant income is (£)		Minimum aggregate *limit of indemnity*
more than	up to	(£)
10,000,000	12,500,000	2,000,000
12,500,000	15,000,000	2,400,000
15,000,000	17,500,000	2,800,000
17,500,000	20,000,000	3,150,000
20,000,000	25,000,000	3,800,000
25,000,000	30,000,000	4,250,000
30,000,000	35,000,000	4,500,000
35,000,000	40,000,000	4,750,000
40,000,000	50,000,000	5,500,000
50,000,000	60,000,000	6,000,000
60,000,000	70,000,000	6,750,000
70,000,000	80,000,000	7,250,000
80,000,000	90,000,000	7,750,000
90,000,000	100,000,000	8,500,000
100,000,000	150,000,000	11,250,000
150,000,000	200,000,000	14,000,000
200,000,000	250,000,000	17,000,000
250,000,000	300,000,000	19,750,000
300,000,000	n/a	22,500,000

(2) full retroactive cover in respect of the kinds of liabilities described in 13.1.9R for claims arising from work carried out by the *firm*, or on its behalf, in the past; and

(3) cover in respect of *Ombudsman* awards made against the *firm*.

Limitations

13.1.20 R The policy must not be subject to conditions or exclusions which unreasonably limit its cover.

13.1.20A R The policy must not limit cover which would otherwise be provided by the policy where:

(1) any of the following default:

(a) the *firm*; or

(b) a *person* or fund relevant to a potential claim; or

(2) a *person* other than the *firm* is entitled to make a claim on the policy.

13.1.20B R IPRU(INV) 13.1.20AR does not limit the generality of the scope of IPRU(INV) 13.1.20R.

(2) In IPRU(INV) 13.1.20R and IPRU(INV) 13.1.20AR, "limit cover" includes limiting by exclusion, by policy excesses or otherwise.

(3) In IPRU(INV) 13.1.20AR, "default" means becoming:

(a) in default;

(b) insolvent or likely to be unable to satisfy claims against it; or

(c) the subject of one or more of the proceedings listed in COMP 6.3.3R in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction) whether or not a determination under COMP 6.3.3R has been made.

13.1.20C R The policy's terms must include a statement confirming that the policy complies with IPRU(INV) 13.1.20AR.

13.1.20D G (1) An example of a *person* or fund relevant to a potential claim (see IPRU(INV) 13.1.20AR(1)(b)) is a fund the *firm* advised its *customers* to invest in.

(2) An example of a *person* entitled to make a claim under the policy (see IPRU(INV) 13.1.20AR(2)) is:

(a) a *customer* of the *firm* or related *person* by virtue of the Third Parties (Rights Against Insurers) Act 2010; or

(b) the *FSCS*.

(3) One of the purposes of IPRU(INV) 13.1.20AR(2), taken with *COMP*, is that a claim on the policy by the *FSCS* is treated as each of the claims the *FSCS's* claim represents, taken separately. For example, the *FSCS*

may make a claim on the policy in relation to each claim under (2)(a) as a result of assignment.

Exclusions

13.1.21 R The policy must not:

(1) exclude any type of business or activity that has been carried out by the *firm* in the past or will be carried out by the *firm* during the time for which the policy is in force; or

(2) exclude liabilities which are identified or crystallised as a result of regulatory action against the *firm* (either individually or as a member of a *class* of *authorised persons*);

unless the *firm* holds additional capital resources, in accordance with 13.1.23R.

13.1.22 G

(1) The *FCA* considers it reasonable for a *firm*'s policy to exclude cover for:

(a) specific business lines if that type of business has not been carried out by the *firm* in the past and will not be carried out by the *firm* during the life of the policy; or

(b) specific *claims* that have been previously notified to the *firm*'s *insurer* and claimed for under another policy.

(2) The *FCA* does not consider it reasonable for a *firm*'s policy to treat legal defence costs cover as part of the *limits of indemnity* if this reduces the cover available for any individual substantive claim.

Additional capital resources - exclusions

13.1.23 R The amount of additional capital resources that a *firm* must hold as a result of an exclusion under IPRU-INV 13.1.21R must be calculated by referring to the *firm*'s relevant income in the following table:

Relevant income £000s		Minimum additional capital resources
more than	up to	£000s
		(Notes 1 and 2)
0	100	5
100	200	12
200	300	18
300	400	21
400	500	23
500	600	25
600	700	27

700	800	28
800	900	30
900	1,000	31
1,000	1,500	37
1,500	2,000	42
2,000	2,500	46
2,500	3,000	51
3,000	3,500	55
3,500	4,000	59
4,000	4,500	63
4,500	5,000	67
5,000	6,000	73
6,000	7,000	79
7,000	8,000	85
8,000	9,000	90
9,000	10,000	95
10,000	100,000	95y
100,000	n/a	950

Note 1 - For *firms* with relevant income of more than £10m but up to £100m value y is calculated by relevant income/ £10m.

Note 2 - The calculation of a *firm*'s capital resources is set out in sections IPRU-INV 13.13 to 13.15.

13.1.24 G The *firm* should hold additional capital resources in excess of those minimum amounts set out in the table in 13.1.23R where the required amounts of additional capital resources provide insufficient cover, taking into account the *firm*'s individual circumstances.

Excess level

13.1.25 R The policy must not make provision for payment by the *firm* of an excess on any claim of more than £5,000, unless the *firm* holds additional capital resources, in accordance with 13.1.27R.

13.1.26 R The reference to "excess" is to the highest excess level required to be paid under the policy unless that excess relates to a type of business that has not been carried out by the *firm* in the past. In those circumstances, the reference is to the next highest excess level required by the policy applicable to a type of business that has been carried out by the *firm* in the past.

Additional capital resources - excess

13.1.27 R The amount of additional capital resources that a *firm* must hold where the policy's excess on any claim is more than £5,000 must be calculated by referring to the *firm's* relevant income and excess obtained in the following table:

All amounts are shown in £000s (Notes 1 and 2)

Relevant income is		Excess obtained, up to and including											
more than	up to	5	10	15	20	25	30	40	50	75	100	150	200+
0	100	0	4	7	9	12	14	18	21	28	34	45	54
100	200	0	7	11	14	17	20	25	29	38	46	59	70
200	300	0	9	14	18	21	24	30	35	45	54	69	82
300	400	0	11	16	21	24	28	34	39	50	60	77	91
400	500	0	13	18	23	27	30	37	43	55	66	83	98
500	600	0	14	20	25	29	33	40	46	59	70	89	105
600	700	0	16	22	27	31	35	42	49	63	74	94	111
700	800	0	17	23	28	33	37	45	52	66	78	99	117
800	900	0	18	24	30	35	39	47	54	69	82	103	122
900	1,000	0	19	26	31	36	41	49	56	72	85	107	126
1,000	1,500	0	23	31	37	43	48	57	66	83	99	124	146
1,500	2,000	0	26	35	42	48	54	64	73	93	109	138	161
2,000	2,500	0	29	38	46	53	59	71	81	102	121	152	179
2,500	3,000	0	32	42	51	58	65	78	89	112	132	166	195
3,000	3,500	0	35	46	55	63	71	84	96	121	142	179	210
3,500	4,000	0	38	50	59	68	76	90	102	129	152	191	223
4,000	4,500	0	41	53	63	72	80	95	108	137	161	202	236
4,500	5,000	0	43	56	67	76	85	100	114	144	169	212	248
5,000	6,000	0	48	62	73	84	93	110	125	157	185	231	271
6,000	7,000	0	52	67	79	90	101	119	135	169	199	249	291
7,000	8,000	0	56	72	85	97	107	127	144	181	212	265	310
8,000	9,000	0	59	76	90	103	114	134	152	191	224	280	328

9,000	10,000	0	63	80	95	108	120	141	160	201	236	294	344
10,000	100,000	0	63y	80y	95y	108y	120y	141y	160y	201y	236y	294y	344y
100,000	n/a	0	630	800	950	1080	1200	1410	1600	2010	2360	2940	3440

Note 1 - For *firms* with relevant income more of £10m but up to £100m value y is calculated by relevant income/ £10m.

Note 2 - The calculation of a *firm*'s capital resources is set out in section IPRU-INV 13.13 to 13.15.

Notification requirements

13.1.28 R A *firm* must notify the *FCA* immediately if it becomes aware, or has information which reasonably suggests, that any of the following matters in relation to its professional indemnity insurance has occurred, may have occurred or may occur in the foreseeable future:

(1) professional indemnity insurance cannot be obtained within 28 days of the inception or renewal date;

(2) professional indemnity insurance is cancelled;

(3) the amount of aggregate cover is exhausted;

(4) the *firm* commences business lines for which it had not obtained cover;

(5) the *firm* is relying on a policy cover for more than one *firm*; or

(6) the *firm* is relying on a comparable guarantee provided in accordance with the *rules* in this chapter.

13.1.29 G (1) For the purposes of the provisions relating to professional indemnity insurance, "additional capital resources" means readily realisable *own funds* or capital resources under IPRU-INV 13.15.3R, depending on the type of firm.

(2) The *FCA* expects items included in *own funds* or capital resources under IPRU-INV 13.15.3R, depending on the type of *firm*, to be regarded as "readily realisable" only if they can be realised, at any given time, within 90 days.

13.3 FINANCIAL RESOURCES TEST 1 - OWN FUNDS

13.3.1 R [deleted]

13.3.1A G [deleted]

13.3.2 R [deleted]

13.3.2A R [deleted]

13.3.2B G [deleted]

[deleted]

Alternative to Financial Resources Test 1

13.3.3 R [deleted]

13.3.3A R [deleted]

13.3.3B R [deleted]

13.6 Large exposures [deleted]

13.6.1 R [deleted]

Requirements [deleted]

13.6.2 R [deleted]

13.6.2A R [deleted]

13.6.2B R [deleted]

13.6.2C R [deleted]

13.6.2D R [deleted]

Table 13.6.2(1) [deleted]

Calculation of financial resources to meet tests 1, 1A OR 2 [deleted]

13.6.2D R Table 13.6.2(2) [deleted]

13.8 Trading Book [deleted]

13.8.2 G [deleted]

13.8.2 R [deleted]

13.8.3 G [deleted]

13.13 CAPITAL RESOURCES REQUIREMENT FOR A PERSONAL INVESTMENT FIRM

Application

13.13.1 **R** This section applies to a *personal investment firm*.

Requirement

13.13.2 **R**

(1) A *firm* to which *MIPRU* does not apply must calculate its capital resources requirement as in (2).

(2) The *firm* must calculate its capital resources requirement as the higher of:

(a) £20,000; and

(b) the amount equivalent to the applicable percentage of its *annual income* specified in table 13.13.2(2)(b), depending on the type of *firm*.

Table 13.13.2(2)(b)

This table forms part of IPRU-INV 13.13.2R.

(A)	(B) Type of *firm*	(C) Applicable percentage of *annual income*
(2)	*Category B1 firm*	10%
(3)	*Category B2 firm*	10%
(4)	*Category B3 firm* which is permitted to carry on the activity of *managing investments* in respect of portfolios containing only *life policies* or to delegate such activity to an *investment firm*	10%
(5)	*Category B3 firm* not in (4)	5%

13.13.3 **R**

(1) A *firm* to which *MIPRU* also applies must calculate its capital resources requirement as in (2).

(2) The *firm* must calculate its capital resources requirement as the higher of:

(a) £20,000; and

(b) the sum of:

(i) the amount that would have applied to it under IPRU-INV 13.13.2R(2)(b) if it were a *firm* of the type in column (B) of table 13.13.2(2)(b); and

(ii) the capital resources requirement in MIPRU 4.2. (Capital resources requirements), after excluding the fixed amounts specified in table 13.13.3(2)(b)(ii).

Table 13.13.3(2)(b)(ii)

This table forms part of IPRU-INV 13.13.3R.

Activity	Provision	Fixed amount
Insurance distribution activity or *home finance mediation activity*	MIPRU 4.2.11R(1)(a) (*firm* not holding *client money* or *assets*)	£5,000
	MIPRU 4.2.11R(2)(a) (*firm* holding *client money* or *assets*)	£10,000
Home financing and *home finance administration* (not connected to *regulated mortgage contracts*)	MIPRU 4.2.12R(1)(a)	£100,000
Home finance administration (with all assets off balance sheet)	MIPRU 4.2.19R(1)	£100,000
Home financing and *home finance administration* (connected to *regulated mortgage contracts*)	MIPRU 4.2.23R(1)	£100,000

13.13.4 G

(1) IPRU-INV 13.13.4G(2) illustrates how a *firm* that is subject to this section and *MIPRU* calculates its capital resources requirement under IPRU-INV 13.13.3R.

(2) Example: A *category B3 firm* with *annual income* of £300,000 under this section and £100,000 from its *home finance mediation activity* (without holding *client money*) should calculate capital resources requirement as specified in table 13.13.4G(2).

Table 13.13.4G(2)

This table forms part of IPRU-INV 13.13.4G.

Requirement	Calculation	Amount
The capital resources requirement is the higher of:		
(1) £20,000; and	£20,000	£20,000
(2) The sum of:		
(a) the amount that would have applied to it under IPRU-INV 13.13.2R(2)(b) if it were a firm of the type in col	As this is a *category B3 firm*, the applicable calculation is 5% of £300,000.	£15,000

Requirement	Calculation	Amount
umn (B) of table 13.13.2(2)(b); and		
(b) the capital resources requirement in MIPRU 4.2. (Capital resources requirements), after excluding the fixed amounts specified in table 13.13.3(2)(b)(ii).	For a *firm* carrying on *home finance mediation activity* without holding *client money*, MIPRU 4.2.11R(1) specifies a requirement of 2.5% of £100,000 (excluding the amount of £5,000 in MIPRU 4.2.11R(1)(a)).	£2,500
	Total of part (2) of the capital resources requirement, which is £15,000 plus £2,500.	£17,500
	The capital resources requirement is the higher of part (1), which is £20,000, and part (2), which is £17,500.	£20,000

13.13.5 R A *firm* whose permission includes *establishing, operating or winding up a personal pension scheme* must calculate its capital resources requirement as the sum of:

(1) the capital resources requirement that is applied under IPRU-INV 13.13.2R(2) or IPRU-INV 13.13.3R(2); and

(2) the financial resources requirement calculated in accordance with IPRU-INV 5 (Investment Management Firms).

13.14 CALCULATION OF ANNUAL INCOME FOR A PERSONAL INVESTMENT FIRM

Application

13.14.1 R This section applies to a *personal investment firm*.

Annual income

13.14.2 R This section applies to a *firm* when it calculates *annual income* for its capital resources requirement.

13.14.3 R

(1) "*Annual income*" is the *annual income* from the *firm's designated investment business* as given in its reporting form in (3) drawn up at its most recent *accounting reference date*.

(2) In (1), the most recent *accounting reference date* is the last one for which the *firm* reported *annual income*.

(3) The relevant reporting form under SUP 16.12 is the Retail Mediation Activities Return (*RMAR*) (Section B: Profit and Loss Account).

(4) If the *firm's* most recent reporting form does not cover a 12-*month* period, the *annual income* is derived by converting the amount reported, proportionally, to a 12-*month* period.

(5) If the *firm* does not yet have a reporting form under (1), the *annual income* is taken from the forecast or other appropriate accounts which the *firm* has submitted to the *FCA*.

13.14.4 R *Annual income* must include the following amounts due to the *firm* in respect of its *designated investment business*:

(1) brokerage;

(2) fees;

(3) commissions; and

(4) other related income (for example, administration charges or profit shares).

13

13.14.5 G A *firm* should include in its *annual income* those amounts it may have agreed to pay to other *persons* involved in a *transaction*, such as other intermediaries or self-employed *advisers*.

13.14.6 G A *firm* should not include in its *annual income* those amounts due to it that are used in the calculation of its capital resources requirement under MIPRU 4.2.11R (Capital resources requirement: insurance distribution activity or home finance mediation activity only) or MIPRU 4.2.20R (Capital resources requirement: insurance distribution activity and home financing, or home finance administration).

13.14.7 G For the purpose of IPRU-INV 13.4.3R, a *firm* should ensure that the amount of *annual income* adequately reflects the level of its *designated investment business* when deciding whether to add any income not included under any of the reporting forms in IPRU-INV 13.14.3R(3). In doing so, the *firm* should have regard to its circumstances, for example, where such income is being accounted for by a third party.

13.14.8 R If a *firm* is a *principal*, its *annual income* includes amounts due to its *appointed representative* for activities related to *designated investment business* for which the *firm* has accepted responsibility.

13.14.9 G If a *firm* is a *network*, its *annual income* should include the relevant income due to all of its *appointed representatives* for *designated investment business*.

13.15 CALCULATION OF OWN FUNDS TO MEET THE CAPITAL RESOURCES REQUIREMENT FOR A PERSONAL INVESTMENT FIRM

Application

13.15.1 R This section applies to a *personal investment firm*.

13.15.2 G [deleted]

13.15.3 R A *firm* must calculate its capital resources in accordance with table 13.15.3(1).

Table 13.15.3(1)

This table forms part of IPRU-INV 13.15.3R.

Capital resources	
Companies	**Sole traders: Partnerships**
Paid-up *share* capital (excluding preference shares redeemable by shareholders within two years) *Eligible LLP members' capital* *Share* premium account Retained profits (see IPRU-INV 13.15.4R) and interim net profits (Note 1) Revaluation reserves Subordinated loans (see IPRU-INV 13.15.7R) *Debt capital*	Balances on proprietor's or partners' - capital accounts - current accounts (see IPRU-INV 13.15.4R) Revaluation reserves Subordinated loans (see IPRU-INV 13.15.7R)
less	less
- Intangible assets	- Intangible assets
- *Material current year losses*	- *Material current year losses*
- *Excess LLP members' drawings*	- Excess of current year drawings over current year profits
Note 1	
Retained profits must be audited and interim net profits must be verified by the *firm*'s external auditor, unless the *firm* is exempt from the provi	

Capital resources
sions of Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.

13.15.4 R When calculating a *firm's* capital resources, the following adjustments apply to retained profits or (for *sole traders* or *partnerships*) current accounts figures:

(1) a *firm* must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;

(2) a *firm* must de-recognise any *defined benefit asset*;

(3) a *firm* may substitute for a *defined benefit liability* its *deficit reduction amount* and that election must be applied consistently in respect of any one financial year;

(4) a *firm* must deduct any unrealised gains on investment property and include these within revaluation reserves; and

(5) where applicable, a *firm* must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

13.15.5 G A *firm* should keep a record of, and be ready to explain to its supervisory contacts in the *FCA*, the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

Personal assets

13.15.6 G Where a *firm* is a *sole trader* or a *partnership*:

(1) it can use (to the extent necessary to make up any shortfall in the required resources) any of its personal assets (not being needed to meet liabilities arising from its personal activities and any business activities not regulated by the *FCA*);

(2) the *firm*'s total financial resources, from whatever source, must at all times be sufficient to cover its total liabilities.

13.15.7 R A *firm* may include a short-term subordinated loan as capital resources (see table in IPRU-INV 13.15.3R), if all the conditions in IPRU-INV 13.15.8R are satisfied.

13.15.8 R The conditions referred to in IPRU-INV 13.15.7R are:

(1) the subordinated loan must have an original maturity of at least two years or, if it has no fixed term, it is subject to not less than two years' notice of repayment;

(2) the agreement governing the subordinated loan must not permit payment of interest unless a *firm* has at least 120% of its capital resources requirement after that payment;

(3) the agreement governing the subordinated loan must only permit *repayment*, prepayment or termination on:

(a) maturity, or on expiration of the period of notice, if a *firm* has at least 120% of its capital resources requirement after that payment or termination; or

(b) winding up after the claims of all other creditors and all outstanding debts have been settled;

(4) the agreement governing the subordinated loan is in the standard form for short term subordinated loans prescribed by the *FCA* (see form 13.1 Form of subordinated loan agreement for *personal investment firms*); and

(5) the restrictions in IPRU-INV 13.15.9R and IPRU-INV 13.15.10R are complied with.

Restrictions

13.15.9 R A *firm* must calculate:

(1) the aggregate amount of its short-term subordinated loans and its preference *shares* which are not redeemable within two years;

(2) the amount of the *firm*'s total capital and reserves excluding preference *share* capital, less the amount of its intangible assets, multiplied by 400%.

13

13.15.10 R A *firm* must treat as a liability in the calculation or its capital resources any amount by which the sum of IPRU-INV 13.15.9R(1) exceeds the product of IPRU-INV 13.15.9R(2).