

Chapter 2

Authorised professional firms

2.1 APPLICATION

- 2.1.1** **R** (1) This chapter applies to an *authorised professional firm* in accordance with ■ IPRU-INV 2.1.2R and ■ IPRU-INV 2.1.3R.
- (2) The definitions in the *Glossary* apply to this Chapter.
- 2.1.2** **G** (1) An *authorised professional firm* of a kind falling within (2) must comply with such of ■ IPRU-INV 3, ■ 5 or ■ 13 which in accordance with ■ IPRU-INV 2.1.4R, most appropriately correlates to the type and scale of the business which it conducts.
- (2) The type of *authorised professional firm* to which (1) applies is one:
- (a) [deleted]
 - (b) which acts as a *market maker*;
 - (c) which acts as a *stabilising manager*;
 - (da) which acts as a *small authorised UK AIFM* or a *residual CIS operator*;
 - (db) which acts as a *depository*;
 - () which acts as a *broker fund adviser* or otherwise participates in a *broker fund* arrangement;
 - () whose main business, having regard to (3), is not the practice of its profession or professions;
 - () whose *permission* includes a requirement that it acts in conformity with the financial resources *rules* applicable to another type of *firm*; or
 - () whose *permission* includes *establishing, operating or winding up a personal pension scheme*.
- (3) For the purposes of (2)(f), a *firm's* professional business practice is not the "main business" of the *firm* unless the proportion of income it derives from *professional fees* is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).
- (4) An *authorised professional firm* which, in accordance with (1), is required to comply with ■ IPRU-INV 3, ■ 5 or ■ 13 must immediately give notification of that fact to the *FCA* in accordance with ■ SUP 15.7 (Forms and method of notification).

2.1.3 **R** An authorised professional firm which does not fall within **■** IPRU-INV 2.1.2R must comply with sections 2.2, 2.3 and 2.4 of this chapter.

2.1.4 **G** This table belongs to **■** IPRU-INV 2.1.1R

TYPE OF BUSINESS ACTIVITY	CHAPTER OF SOURCEBOOK
(i) <i>managing investments</i> other than for <i>retail clients</i> ; or	<i>Investment management firm</i> - IPRU-INV 5
(ii) <i>OPS activity</i> ; or	
(iii) [deleted]	
(iv) [deleted]	
(iva) <i>acting as trustee or depositary of a UK UCITS</i> ; or	
(ivb) <i>managing an AIF</i> ; or	
(ivc) <i>acting as trustee or depositary of an AIF</i> ; or	
(v) <i>acting as a residual CIS operator</i> ; or	
(va) <i>establishing, operating or winding up a personal pension scheme</i> ; or	
(vi) <i>safeguarding and administering investments</i> ;	
(i) <i>advising on, or arranging deals in, packaged products</i> ; or	
(ii) <i>managing investments for retail clients</i> ;	<i>Personal investment firm</i> - IPRU-INV 13
(i) <i>a regulated activity</i> carried on as a member of an exchange; or	
(ii) <i>acting as a market maker in securities or derivatives</i> ; or	<i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>) - IPRU-INV 3
(iii) <i>corporate finance business</i> ; or	
(iv) <i>dealing or arranging deals in securities or derivatives, other than interprofessional investments</i> ; or	
(v) <i>the provision of clearing services as a clearing firm</i> ; or	
(vi) <i>spread betting</i> ;	

2.1.5 **G** An authorised professional firm will be a *MiFID investment firm* if its business activities include the provision of *investment services and/or activities* for a third party. An authorised professional firm will not however be a *MiFID investment firm* if it falls within one of the exclusions contained in Article 2

of *MiFID*. Article 2(1)(c) provides an exclusion for an *authorised professional firm* which provides *investment services and/or activities* in an incidental manner in the course of a professional activity and that activity is regulated by the *firm's designated professional body*.

2.1.6

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The *FCA* considers the scope of this exclusion cannot be precisely defined. Ultimately questions of interpretation are for the Court to determine. The *FCA* considers that to satisfy the exclusion the services cannot be the major part of the practice of the *firm*. The *FCA* also considers the following factors to be among those that are relevant:

- (1) the scale of *regulated activity* in proportion to other professional services provided;
- (2) whether and to what extent activities that are *regulated activities* are held out as separate services;
- (3) the impression given as to how the *firm* provides *regulated activities*, for example through its advertising or other promotions of its service.

2.1.7

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The activities that a *full-scope UK AIFM* and a *UCITS management company* are allowed to perform are restricted by ■ COLL 6.9.9R and ■ FUND 1.4.3R (as applicable). As such, an *authorised professional firm* cannot be a *collective portfolio management firm* or a *collective portfolio management investment firm*.



2.2 FINANCIAL RESOURCES REQUIREMENTS

2.2.1

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- (1) A *firm* must be able to meet its liabilities as they fall due.
- (2) In complying with (1) a *firm* may use any assets which are available to meet any of its liabilities.

2.2.2

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Firms are reminded that:

- (1) requirements relating to the systems and controls which *firms* must establish and maintain for ensuring compliance with financial resources and other requirements are set out in SYSC.
- (2) the financial reports that a *firm* is required to make to the FCA are set out in ■ SUP 16.

2.3 PROFESSIONAL INDEMNITY INSURANCE

- 2.3.1** G A *firm* must effect and maintain at all times adequate professional indemnity insurance cover for all the business activities which it carries on, or for which it is responsible.

- 2.3.2** G In assessing the adequacy of a *firms'* professional indemnity insurance cover for the purposes of ■ IPRU-INV 2.3.1R, the *FCA* may have regard to a *firm's* compliance with the professional indemnity insurance requirements of its *designated professional body* in force at the time.

2.4 BONDING REQUIREMENT FOR ACCOUNTANTS

- 2.4.1** **R** This section applies to a *firm* of accountants practising as such in the UK.
- 2.4.2** **R**
- (1) If the aggregate value of *client money* and *bonded investments* a *firm* holds for a *client* is over £50,000 then the *firm* must ensure that it holds a bond for the excess over £50,000.
 - (2) A *firm* must:
 - (a) ensure that the bond is in the form prescribed by the *FCA*;
 - (b) ensure that the *person* specified to act as trustee in the bond is a *designated professional body* or a solicitor practising as such in the UK;
 - (c) ensure that the bond is lodged with the trustee; and
 - (d) be able at all times to show that the amount of the bond is sufficient to meet the requirements of (1).
- 2.4.3** **R** A *firm* must notify the *FCA* immediately:
- (1) of any bond taken out specifying the amount and where it is lodged; and
 - (2) of the arrangements it has made to comply with **IPRU-INV 2.4.2R** if a bond is not renewed or is cancelled.
- 2.4.4** **G**
- (1) *Firms* which hold *client money* or bonded investments for more than one *client*, may hold one bond to cover all of the *clients* concerned. The bonding requirements may be complied with by taking out a global bond. In firms with numerous offices compliance may be achieved in practice by calculating the requirement based on figures supplied by offices which is likely to be at least quarterly. These figures would need to be supplied and assessed soon after the end of each quarter.
 - (2) To ensure the global cover is sufficient, this approach would require an estimated safety margin to be incorporated, to allow for changes in the amounts of *client money*, *investments* or assets held. An additional prudent measure would be to ensure that exceptional amounts of these assets are notified by branch offices so that the *firm* can check whether the safety margin can absorb them and reconsider whether the total global bond cover remains sufficient.

2.4.5

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Firms which do not expect to hold *bonded investments* or *client money* in excess of the value limit need not hold a bond. However, *firms* may wish to make contingency arrangements with a surety whereby a bond facility is available and can be executed and delivered at short notice.