

## Chapter 2

# Level of application of requirements

2.4 Investment firm groups: general

Application and purpose

- 2.4.1R
- This section applies to:
- (1) a UK parent entity; and

(2) a MIFIDPRU investment firm.
- 2.4.2G
- (1) The definition of an investment firm group covers a parent undertaking that is incorporated in the UK or has its principal place of business in the UK, and its subsidiaries, at least one of which must be a MIFIDPRU investment firm.

(2) The definition of an investment firm group also includes connected undertakings. These are relevant financial undertakings that are not subsidiaries, but which form part of the investment firm group by one of the relationships listed in MIFIDPRU 2.4.6R.

(2) If the subsidiaries of the group include a UK credit institution, the group is not an investment firm group. However, if a UK credit institution is only a connected undertaking in relation to an investment firm group, the group is still an investment firm group. If the investment firm group includes a subsidiary or a connected undertaking that is credit institution established in a third country, the group is still an investment firm group.
- 2.4.3G
- (1) When a UK parent entity or a MIFIDPRU investment firm is identifying whether it forms part of an investment firm group, it must identify all relevant financial undertakings that are either subsidiaries or connected undertakings.

(2) The UK parent entity or MIFIDPRU investment firm can use the analysis in (1) to determine whether the investment firm group:

(a) is likely to be subject to consolidation under MIFIDPRU 2.5; or

(b) has a sufficiently simple structure to justify submitting an application to the FCA to apply the group capital test under MIFIDPRU 2.6.
- 2.4.4G
- (1) Where consolidation under MIFIDPRU 2.5 applies, the definition of an investment firm group and the resulting consolidated situation

includes all *relevant financial undertakings* that are either *subsidiaries* or *connected undertakings*.

- (2) Where ■ MIFIDPRU 2.6 applies, the definition of an *investment firm group* means that the *group capital test* only applies to a *parent undertaking* in relation to *relevant financial undertakings* that are its *subsidiaries* or that are *connected undertakings* in which it holds a *participation* in accordance with ■ MIFIDPRU 2.4.15R. The *group capital test* does not apply in relation to a *relevant financial undertaking* that is a *connected undertaking* of the *parent undertaking* otherwise than due to a *participation*.
- (3) However, as explained in ■ MIFIDPRU 2.4.19G, where an *investment firm group* contains material *connected undertakings* (other than those connected by a *participation*), the FCA considers that the underlying structure of the *investment firm group* is unlikely to be sufficiently simple to permit the application of the *group capital test*. In that case, it is likely that the *UK parent entity* of the *investment firm group* will be subject to consolidation under ■ MIFIDPRU 2.5.

## Subsidiaries

### 2.4.5

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- (1) The definition of a *subsidiary* for the purposes of MIFIDPRU refers to any *undertaking* which is a "subsidiary undertaking" as defined in section 1162, read together with Schedule 7, of the Companies Act 2006.
- (2) Under section 1162(4) of the Companies Act 2006, this includes relationships where either of the following apply in relation to an *undertaking* ("A") and another *undertaking* ("B"):
  - (a) A has the power to exercise, or actually exercises, dominant influence or control over B; or
  - (b) A and B are managed on a unified basis.
- (3) Under section 1162(5) of the Companies Act 2006, if an *undertaking* ("A") has a *subsidiary undertaking* ("B") and B is a *parent undertaking* of another *undertaking* ("C"), then C is also a *subsidiary undertaking* of A. As a result, the definition of a *subsidiary* in MIFIDPRU includes *subsidiaries of subsidiaries*.

## Connected undertakings: general

### 2.4.6

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An *undertaking* ("CU") is a *connected undertaking* of another *undertaking* ("P1") if:

- (1) P1 is connected to CU by *majority common management* in accordance with ■ MIFIDPRU 2.4.8R(1);
- (2) P1 exercises significant influence over CU in accordance with ■ MIFIDPRU 2.4.10R(1);
- (3) P1 and CU have been placed under single management, other than under a contract, clauses in memoranda or articles of association, in accordance with ■ MIFIDPRU 2.4.12R(1);
- (4) CU is a *subsidiary* of another *undertaking* ("P2"), and P2:

### 2.4.7

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The criteria in ■ MIFIDPRU 2.4.8R(2)-■ (5) and ■ MIFIDPRU 2.4.12R(2)-■ (5) for determining the deemed *parent undertaking* in relation to a *connected undertaking* apply to the facts at the time when the relevant relationship is created. This means that a subsequent change in the *own funds requirement* of an entity or *investment firm group* does not change the deemed *parent undertaking*.

### 2.4.8

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#### Connected undertakings: majority common management

This rule applies where:

- a MIFIDPRU investment firm is connected to a relevant financial undertaking by majority common management; or
- a relevant financial undertaking that forms part of an investment firm group is connected to another relevant financial undertaking by majority common management.

If only one of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

If both *undertakings* connected by *majority common management* form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation*, is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and both *undertakings* are MIFIDPRU investment firms, the MIFIDPRU investment firm with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other MIFIDPRU investment firm when applying the requirements in ■ MIFIDPRU 2.5.

If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and only one of the *undertakings* is a MIFIDPRU investment firm, the MIFIDPRU investment firm is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

### 2.4.9

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A MIFIDPRU investment firm may apply to the FCA under section 138A of the Act to modify the application of ■ MIFIDPRU 2.4.8R(2)-■ (5), if it considers that a different *undertaking* should be deemed to be the *parent undertaking* on

the basis of *majority common management* for the purposes of ■ MIFIDPRU 2.5.

### Connected undertakings: significant influence without participation or capital ties

#### 2.4.10

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- (1) This *rule* applies where:
  - (a) any of the following *undertakings* ("A") exercises significant influence over a *relevant financial undertaking*:
    - (i) a *MIFIDPRU investment firm*;
    - (ii) an *investment holding company*; or
    - (iii) a *mixed financial holding company*; and
  - (b) the *relevant financial undertaking* is not:
    - (i) a *subsidiary* of A; or
    - (ii) connected to A by *majority common management*.
- (2) Where this rule applies, A is deemed to be the *parent undertaking* of the *relevant financial undertaking* when applying ■ MIFIDPRU 2.5.

#### 2.4.11

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- (1) To assess whether A exercises significant influence over a *relevant financial undertaking*, the FCA considers that the equivalent accounting position, as it would be assessed under the guidance in International Accounting Standard 28 (as amended in 2011) under IFRS or Financial Reporting Standard 102 (March 2018) under UK GAAP, will be relevant. In particular, a *firm* should consider whether A has the power to participate in the financial and operating policy decisions of the *relevant financial undertaking*, even though A does not have control or joint control of those policies. The indicators in (2) may be evidence of significant influence but are not conclusive. A *firm* should consider all relevant facts and circumstances.
- (2) When applying ■ MIFIDPRU 2.4.10R(1)(a), the following circumstances may be indicators that A exercises significant influence over the *relevant financial undertaking*:
  - (a) A appoints or has the ability to appoint a representative in the *management body* of the *relevant financial undertaking*, either in the executive or in the supervisory function;
  - (b) A participates in the policy-making processes of the *relevant financial undertaking*, including participation in decisions about dividends and other distributions;
  - (c) the existence of material transactions between the two *undertakings*;
  - (d) the interchange of managerial personnel between the two *undertakings*;
  - (e) the provision of essential technical information or critical services from one entity to the other;
  - (f) A enjoys additional rights in the *relevant financial undertaking*, under a contract or a provision in the articles of association or other constitutional documents of the *relevant financial*

*undertaking*, that could affect the management or the decision-making of the *relevant financial undertaking*; and

- (g) the existence of share warrants, share call options, debt instruments that are convertible into ordinary shares or other similar instruments that are currently exercisable or convertible and have the potential, if exercised or converted, to give voting power or to reduce another party's voting power over the financial and operating policies of the *relevant financial undertaking*.

### Connected undertakings: single management other than pursuant to a contract, clauses in memoranda or articles of association

2.4.12

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(1) This *rule* applies where:

- (a) any of the following *undertakings* ("A") has been placed under single management, other than pursuant to a contract, clauses in memoranda or articles of association, with a *relevant financial undertaking*:

- (i) a *MIFIDPRU investment firm*;
- (ii) an *investment holding company*; or
- (iii) a *mixed financial holding company*; and

- (b) the *relevant financial undertaking* is not:

- (i) a *subsidiary* of A;
- (ii) connected to A by *majority common management*; or
- (iii) an *undertaking* over which A exercises significant influence in accordance with ■ MIFIDPRU 2.4.10R.

- (2) If only one of the *undertakings* placed under single management already forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

- (3) If both *undertakings* placed under single management form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

- (4) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and both of those *undertakings* are *MIFIDPRU investment firms*, the *MIFIDPRU investment firm* with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other *MIFIDPRU investment firm* when applying the requirements in ■ MIFIDPRU 2.5.

- (5) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and only one of those *undertakings* is a *MIFIDPRU investment firm*, the *MIFIDPRU investment firm* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in ■ MIFIDPRU 2.5.

- 2.4.13** G When applying ■ MIFIDPRU 2.4.12R, the following circumstances are indicators that the type of single management in ■ MIFIDPRU 2.4.12R(1)(a) may exist:
- (1) A and the *relevant financial undertaking* are controlled by:
    - (a) the same natural *person*;
    - (b) the same group of natural *persons*;
    - (c) an *undertaking* or the same group of *undertakings* that do not otherwise belong to that *group*;
    - (d) an *undertaking* or the same group of *undertakings* that are not established in the *UK*; or
  - (2) the majority of the management body, either in its executive or in its supervisory function, of A and the *relevant financial undertaking* is composed of people appointed by the same *undertaking* or *undertakings*, by the same natural *person* or by the same group of natural *persons*, even if they do not necessarily consist of the same people.
- 2.4.14** G The indicators in ■ MIFIDPRU 2.4.13G are not conclusive. Whether two or more *undertakings* are placed under single management for the purposes of ■ MIFIDPRU 2.4.12R depends on whether in practice there is effective coordination of the financial and operating policies of the relevant *undertakings*. A *firm* should consider all relevant facts and circumstances.
- Connected undertakings: participations** .....
- 2.4.15** R
- (1) This *rule* applies where the following conditions are met:
    - (a) one of the following (“A”) holds, directly or indirectly, a *participation* in a *relevant financial undertaking*:
      - (i) a *MIFIDPRU investment firm*;
      - (ii) an *investment holding company*; or
      - (iii) a *mixed financial holding company*;
    - (b) the *relevant financial undertaking* is not:
      - (i) a *subsidiary* of A; or
      - (ii) connected to A by *majority common management*; or
      - (iii) an *undertaking* over which A exercises significant influence in accordance with ■ MIFIDPRU 2.4.10R; or
      - (iv) an *undertaking* with which A has been placed under single management in accordance with ■ MIFIDPRU 2.4.12R; and
    - (c) A forms part of an existing *investment firm group*.
  - (2) Where this *rule* applies, A is deemed to be the *parent undertaking* of the *relevant financial undertaking* when applying the requirements in ■ MIFIDPRU 2.5 or the *group capital test* in ■ MIFIDPRU 2.6.
- 2.4.16** G
- (1) An *undertaking* (“A”) holds a *participation* in a *relevant financial undertaking* where A has direct or indirect ownership of 20% or



more of the voting rights in, or capital of, a *relevant financial undertaking*.

- (2) However, A may also hold a *participation* where, even though A does not have an ownership interest as described in (1), A nonetheless has rights in the capital of the *relevant financial undertaking* which create a durable link with that *undertaking* which is intended to contribute to its activities.
- (3) For the purpose of assessing whether there is a *participation* of the type described in (2), it is relevant to consider the overall ownership structure of the *relevant financial undertaking*, having regard in particular to whether interests in the capital or voting rights of the *relevant financial undertaking* are distributed across a large number of shareholders, or whether A is the main investor.

### Application to apply the group capital test to an investment firm group

2.4.17

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■ MIFIDPRU 2.6 applies, and ■ MIFIDPRU 2.5 does not apply, to an *investment firm group* where:

- (1) the *UK parent entity* of that *investment firm group* or a *MIFIDPRU investment firm* within that *investment firm group* has applied to the FCA in accordance with ■ MIFIDPRU 2.4.18R; and
- (2) the application in (1) demonstrates to the satisfaction of the FCA that:
  - (a) the group structure of the *investment firm group* is sufficiently simple to justify applying the *group capital test*; and
  - (b) there are no significant risks to *clients* or to the market stemming from the *investment firm group* as a whole that require supervision on a *consolidated basis*.

2.4.18

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An application submitted under ■ MIFIDPRU 2.4.17R(1):

- (1) must be made using the form in ■ MIFIDPRU 2 Annex 2R, and should be submitted using the *online notification and application system*;
- (2) must include:
  - (a) a group structure chart that:
    - (i) identifies each *undertaking* that forms part of the *investment firm group*;
    - (ii) explains the nature of the business or activities of each *undertaking*;
    - (iii) identifies whether each *undertaking* is a *relevant financial undertaking* and, if so, which type of *relevant financial undertaking* it is; and
    - (iv) explains the nature and degree of ownership or control that connects the *undertaking* to the *investment firm group* (including any relationship that has led the *undertaking* to be classified as a *connected undertaking* in relation to the *investment firm group*);



- (b) an explanation of why the group structure is sufficiently simple to justify the application of the *group capital test*;
  - (c) an explanation of why there are no significant risks to *clients* or to the market stemming from the *investment firm group* that require supervision on a *consolidated basis*;
  - (d) calculations which show how each *parent undertaking* within the *investment firm group* would satisfy the *group capital test*;
  - (e) evidence that the book value of each *parent undertaking's* investment in each of the following is a fair reflection of the consideration paid by the *parent undertaking*:
    - (i) a *subsidiary*, whether that *subsidiary* forms part of the *investment firm group* or not; and
    - (ii) an entity that is a *connected undertaking* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R.
  - (f) calculations that demonstrate the consolidated *own funds* and *liquid assets* requirements that would apply on the basis of the *consolidated situation* of the *investment firm group* if consolidation under ■ MIFIDPRU 2.5 applied instead;
  - (g) an explanation of:
    - (i) how the *investment firm group* would comply with the consolidated requirements in (f) if the FCA did not grant permission to apply the *group capital test*; and
    - (ii) the timeframe in which the *investment firm group* would expect to achieve compliance with such consolidated requirements; and
  - (h) an explanation of how the *UK parent entity* of the *investment firm group*:
    - (i) would comply with the systems requirement in ■ MIFIDPRU 2.6.9R; or
    - (ii) would comply with the systems requirement in ■ MIFIDPRU 2.5.8R if the FCA did not grant permission to apply the *group capital test*.
- (3) must be submitted by a *UK parent entity* or a *MIFIDPRU investment firm* that has the necessary authority to make the application on behalf of all *undertakings* within the *investment firm group* that would be subject to the *group capital test*.

2.4.19

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In the FCA's view, where an *investment firm group* includes one or more undertakings that are *connected undertakings* (other than *connected undertakings* due to a *participation* in accordance with ■ MIFIDPRU 2.4.15R), that are material (either individually or in aggregate), it is unlikely that the *investment firm group* will be sufficiently simple to be able to apply the *group capital test*. This is because the relationship between the relevant member of the *investment firm group* and the *connected undertaking* is likely to be more complex and because the *group capital test* can only apply to holdings in instruments issued by, or claims on, an entity. Therefore, prudential consolidation under ■ MIFIDPRU 2.5 is likely to be more appropriate in such circumstances.

## Notifications relating to membership of a consolidation group or financial conglomerate

- (1) A MIFIDPRU investment firm must notify the FCA immediately if the firm becomes aware that:
  - (a) it has become a member of an *investment firm group*;
  - (b) it has ceased to be a member of an *investment firm group*;
  - (c) there has been a change in the composition of an *investment firm group* of which that firm forms a part;
  - (d) it has become a member of a *financial conglomerate*; or
  - (e) it has ceased to be a member of a *financial conglomerate*.
- (2) A firm must:
  - (a) notify the FCA under (1) using the form in ■ MIFIDPRU 2 Annex 8R and submit it using the *online notification and application system*; and
  - (b) as part of the notification in (a):
    - (i) identify any entity that is becoming a member of the *investment firm group* or *financial conglomerate*;
    - (ii) identify any existing members of the *investment firm group* or *financial conglomerate* that continue to be members of that *investment firm group* or *financial conglomerate*;
    - (iii) identify any entity that is ceasing to be a member of the *investment firm group* or *financial conglomerate*; and
    - (iv) where applicable, confirm that the *investment firm group* or *financial conglomerate* has ceased to exist.
- (3) A firm ("X") is not required to notify the FCA under (1) if:
  - (a) another member of the relevant *investment firm group* or *financial conglomerate* ("Y") has notified the FCA under (1); and
  - (b) the notification submitted by Y includes information that accurately reflects X's relationship to the *investment firm group* or *financial conglomerate* and any other information required under (2)(b).