

**THRESHOLD CONDITIONS INSTRUMENT 2001**

- A. The Financial Services Authority gives the guidance in the Annex to this instrument (COND) in the exercise of the power listed in Schedule 4 to COND (Powers exercised).
- B. This instrument shall come into force at the beginning of the first day on which section 40 of the Financial Services and Markets Act 2000 (Application for permission) comes into force for any purpose.
- C. This instrument may be cited as the Threshold Conditions Instrument 2001.
- D. The Annex to this instrument may be cited as the Threshold Conditions (or COND).

By order of the Board  
21 June 2001

# ANNEX



# Threshold Conditions



## **Contents**

Transitional Provisions

Text of COND :

1. Introduction to the Threshold Conditions
2. The Threshold Conditions

Schedule 1: Record keeping requirements

Schedule 2: Notification requirements

Schedule 3: Fees and other required payments\*

Schedule 4: Powers exercised

Schedule 5: Rights of action for damages

Schedule 6: Rules that can be waived

Derivations

Destinations

[\*These parts of AUTH will be added later]

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## Handbook Modules

### Transitional Provisions

#### 1 G Table

There are no transitional provisions in *COND*. However, *GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*.

# Chapter 1.

## Introduction



## 1.1 Application

### Who?

#### 1.1.1

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COND applies to every *firm*, except that:

- (1) for an *incoming EEA firm* or an *incoming Treaty firm* only *threshold conditions* 1, 3, 4 and 5 apply and only in so far as relevant to:
  - (a) an application for a *top-up permission* under Part IV of the *Act* (that is, *permission* to carry on *regulated activities* in addition to those permitted through the *incoming firm's authorisation* under Schedule 3 (EEA Passport Rights) or 4 (Treaty Rights) to the *Act* ); and
  - (b) the exercise of the *FSA's own-initiative power* under section 45 of the *Act* (Variation etc on the *FSA's own initiative*) in relation to the *top-up permission*.
- (2) COND also applies to an applicant for *Part IV permission*.

#### 1.1.2

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In COND, '*firm*' includes an applicant for *Part IV permission* unless the context otherwise requires.

### What?

#### 1.1.3

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COND applies in relation to all of the *regulated activities* for which a *firm* has, or will have, *permission*, except as stated in COND 1.1.1G(1).

### Where?

#### 1.1.4

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COND applies in relation to all of the *regulated activities* wherever they are carried on, except as stated in COND 1.1.1G(1).

## 1.2 Purpose

### 1.2.1

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COND gives *guidance* on the *threshold conditions* set out in Schedule 6 to the *Act* (Threshold conditions). The *threshold conditions* represent the minimum conditions which a *firm* is required to satisfy, and continue to satisfy, in order to be given and to retain *Part IV permission*.

#### Applications for Part IV permission or variation of Part IV permission

### 1.2.2

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- (1) Under section 41(2) of the *Act* (The threshold conditions), in giving or varying a *Part IV permission* or imposing or varying any *requirement*, the *FSA* must ensure that the *firm* concerned will satisfy, and continue to satisfy, the *threshold conditions* in relation to all of the *regulated activities* for which it has or will have *permission*.
- (2) If, however, the applicant for *permission* is an *incoming firm* seeking *top-up permission*, or variation of *top-up permission*, under Part IV of the *Act* (Permission to carry on regulated activities), then under paragraphs 6 and 7 of Schedule 6 to the *Act*, the *FSA* will have regard only to satisfaction of *threshold conditions* 1, 3, 4 and 5, as relevant to the *regulated activities* for which the applicant has, or will have, *Part IV permission*.

#### Exercise of the FSA's own-initiative power

### 1.2.3

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- (1) If, among other things, a *firm* is failing to satisfy any of the *threshold conditions*, or is likely to fail to do so, section 45 of the *Act* (Variation etc. on the *FSA's* own initiative) states that the *FSA* may exercise its *own-initiative power*. Use of the *FSA's* *own-initiative power* is explained in *SUP 7* (Individual requirements), *ENF 3* (Variation of Part IV permission on the *FSA's* own initiative) and *ENF 5* (Cancellation of Part IV permission on the *FSA's* own initiative and withdrawal of authorisation).
- (2) If, when exercising its *own-initiative power* under section 45(1) of the *Act*, the *FSA* varies a *firm's* *permission*, or imposes or varies a *requirement*, then, under section 41(1) of the *Act*, the *FSA* must ensure that the *firm* concerned will satisfy, and continue to satisfy, the *threshold conditions* in relation to all of the *regulated activities* for which it has or will have *permission*. However, section 41(2) of the *Act* states that the duty imposed by section 41(1) of the *Act* does not prevent the *FSA* taking such steps as it considers necessary in relation to a particular *firm* in order to secure its *regulatory objective of consumer protection*.
- (3) The *FSA* can also exercise its *own-initiative power* under section 45 of the *Act* in relation to the *top-up permission* of an *incoming firm*. But this is only on



the grounds that the *incoming firm* is failing, or likely to fail, to satisfy *threshold conditions* 1, 3, 4 or 5 in relation to that *permission*.

#### Approval of acquisitions or increases of control

##### 1.2.4

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(1) Under section 186(3) of the *Act* (Objection to acquisition of control), in deciding whether the approval requirements for a proposed acquisition or increase of *control* are satisfied, the *FSA* must have regard, in relation to the *control* that the acquirer:

- (a) has over the *firm*; or
- (b) will have over the *firm* if the proposal which has been notified to the *FSA* is carried out;

to its general duty to ensure that the *firm* will continue to satisfy the *threshold conditions*.

(2) The *FSA* must also have regard to the *threshold conditions* in imposing any conditions on its approval of an acquisition or increase of *control* (section 185(2) of the *Act* (Conditions attached to approval)). See *SUP* 11.7.3G (Acquisition or increase of control: procedures).

## 1.3 General

### An overview of the *threshold conditions* is given in COND 1 Ann 1G.

- 1.3.1** G<sub>/1</sub> The *guidance* in COND 2 explains each *threshold condition* in Part I of Schedule 6 (threshold conditions) to the *Act* and how the *FSA* will interpret it in practice. An overview of the *threshold conditions* is given in COND 1 Ann 1G. This *guidance* is not, however, exhaustive and is written in very general terms. A *firm* will need to have regard to the obligation placed upon the *FSA* under section 41 (the *threshold conditions*) of the *Act*; that is, the *FSA* must ensure that the *firm* will satisfy, and continue to satisfy, the *threshold conditions* in relation to each *regulated activity* for which it has, or will have, *permission*.
- 1.3.2** G<sub>/1</sub>
- (1) The *FSA* will consider whether a *firm* satisfies, and will continue to satisfy, the *threshold conditions* in the context of the size, nature, scale and complexity of the business which the *firm* carries on or will carry on if the relevant application is granted.
  - (2) In relation to *threshold conditions* 4 and 5, the *FSA* will consider whether a *firm* is ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the *regulatory system* which apply to the *firm*, or will apply to the *firm*, if it is granted *Part IV permission*, or a variation of its *permission*. These matters will also be considered if the *FSA* is exercising its *own-initiative power* (see COND 1.2.3G). Guidance to *firms* on the implications of this is given under each of those *threshold conditions*.
- 1.3.3** G<sub>/1</sub> Although the *FSA* may consider that a matter is relevant to its assessment of a *firm*, the fact that a matter is disclosed to the *FSA*, for example in an application, does not necessarily mean that the *firm* will fail to satisfy the *threshold conditions*. The *FSA* will consider each matter in relation to the *regulated activities* for which the *firm* has, or will have, *permission*, having regard to the *regulatory objectives* set out in section 2 of the *Act* (The *FSA*'s general duties). A *firm* should disclose each relevant matter but, if it is appropriate to do so, it is encouraged to discuss it with the *FSA*. This will enable the *FSA* to consider fully how material or significant the matter is and how it affects the ability of the *firm* to satisfy, and continue to satisfy, the *threshold conditions* (see also COND 2.3.5G, COND 2.4.4G(3) and COND 2.5.4G(3)).

### Statutory quotations

- 1.3.4** G<sub>/1</sub> (1) For ease of reference, the *threshold conditions* in Schedule 6 to the *Act* have been quoted in full in COND 2.

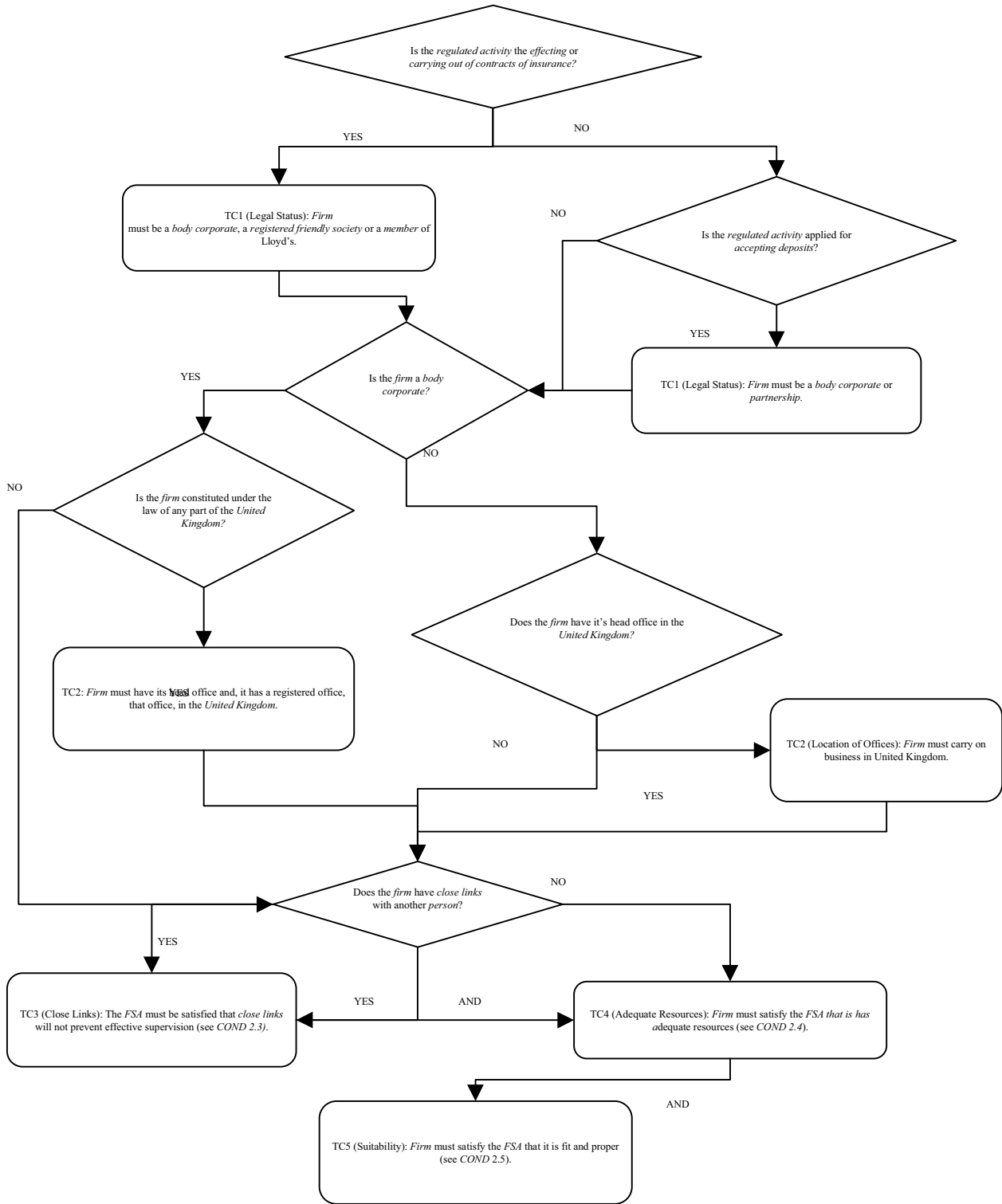
- (2) As these provisions impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are *rules* made by the *FSA*.
- (3) Where words have been substituted for the text of these provisions the substitutions are enclosed in square brackets ([ ]). However, none of the changes made by the *FSA* in these quotations for the purpose of the text in *COND* can supersede or alter the meaning of the statutory provision concerned.

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## Introduction

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Overview of the threshold conditions (COND 1.3.1G)



## Chapter 2.

2.

# The threshold conditions

## 2.1 Threshold condition 1: Legal status

2.1.1 Table Paragraph 1, Schedule 6 to the Act.

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- (1) If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate, a registered friendly society or a member of Lloyd's.**
- (2) If the person concerned appears to the [FSA] to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits, it must be—**
- (a) a body corporate; or**
  - (b) a partnership.**

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Section 40(1) of the *Act* (Application for permission) allows an application to be made to the *FSA* for *Part IV permission* by an individual, a *body corporate*, a *partnership* or an unincorporated association. However, in the case of the *regulated activities of accepting deposits* and *effecting or carrying out contracts of insurance*, article 1 of the *Banking Consolidation Directive* and article 8(1) of the *First Non-Life Directive* and of the *First Life Directive* place further limits on the legal forms a *firm* may take. The *Act* implements the provisions of the directives and extends some of these limits to *firms* that are outside the scope of the directives.

## 2.2 Threshold condition 2: Location of offices

2.2.1

Table Paragraph 2, Schedule 6 to the Act.

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- (1) If the person concerned is a body corporate constituted under the law of any part of the United Kingdom –**
- (a) its head office, and**
  - (b) if it has a registered office, that office, must be in the United Kingdom.**
- (2) If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.**

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*Threshold condition 2* (Location of offices), implements the requirements of article 6 of the *Post BCCI Directive*, although the *Act* extends this condition to *firms* which are outside the scope of the *Single Market Directives* and the *UCITS Directive*.

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Neither the *Post BCCI Directive* 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 *FSA* 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 Threshold condition 3: Close links

2.3.1 Table Paragraph 3, Schedule 6 to the Act.

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- (1) If the person concerned ("A") has close links with another person ("CL"), the [FSA] must be satisfied–**
- (a) that those links are not likely to prevent the [FSA's] effective supervision of A; and**
  - (b) if it appears to the [FSA] that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the [FSA's] effective supervision of A.**
- (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.**
- (3) "Subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.**

2.3.2 **G** *Threshold condition 3 (Close links) implements requirements of the Post BCCI Directive, 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 and the UCITS Directive.*

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2.3.3 **G** In assessing this *threshold condition*, factors which the FSA will take into consideration include, among other things, whether:

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- (1) it is likely that the FSA 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* and to identify and assess the impact on the *regulatory objectives* in section 2 of the *Act* (The FSA's general duties); 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 FSA;
- (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 FSA; 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 FSA will consider the totality of information available from all sources;

- (3) the *firm* and the *group* to which it belongs are, or will be, subject to supervision on a consolidated basis (consolidated supervision) (for example, if a financial resources requirement is determined for the *group* as a whole); and
- (4) 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.

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When assessing whether the *firm* will satisfy and continue to satisfy this *threshold condition*, the *FSA* will have regard to all relevant matters, whether arising in the *United Kingdom* or elsewhere.

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The *FSA* will take into account relevant matters only in so far as they are significant (see *COND* 1.3.3G). In determining the weight to be given to any relevant matter, the *FSA* will consider its significance in the context of its ability to supervise the *firm* adequately, having regard to the *regulatory objectives* in section 2 of the *Act*. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern

### Meaning of "parent undertaking" and "subsidiary undertaking"

## 2.3.6

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- (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 Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986. These are the cases referred to in *COND* 2.3.7G(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* 2.3.7G(1)(g) and (h).
- (3) Paragraph 3(3) of Schedule 6 to the *Act* extends the meaning of 'subsidiary undertaking' for the purposes of *threshold condition* 3 (Close links) 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* 2.3.11G).

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- (1) For the purposes of *threshold condition* 3 (Close links) 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 a participating interest (as defined in section 260 of the Companies Act 1985 (Participating interests)) in the *subsidiary undertaking* and:
  - (i) actually exercises a dominant influence over it; or
  - (ii) it and the *subsidiary undertaking* are managed on a unified basis; or
- (f) it is a *parent undertaking* of a *parent undertaking* of the *subsidiary undertaking*; or
- (g) it is an individual and would be a *parent undertaking* if it were an *undertaking*; or
- (h) it is incorporated in or formed under the law of another *EEA State* and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the *Seventh Company Law Directive*.

(2) A flowchart of COND 2.3.7G(1) is set out in COND 2 Ann 1G.

## 2.3.8

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- (1) In relation to COND 2.3.7G(1)(b) and (d), an *undertaking* is treated as a member of another *undertaking* if any of its *subsidiary undertakings* is a member of that *undertaking*, or if any shares in that other *undertaking* are held by a *person* acting on behalf of the *undertaking* or any of its *subsidiary undertakings*.
- (2) In relation to COND 2.3.7G(1)(e), a 'participating interest' means an interest held by an *undertaking* in the shares of another *undertaking* which it holds on a long term basis, for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest. A holding of 20% or more of the shares of an *undertaking* is presumed to be a participating interest unless the contrary is shown. Examples of interests of a temporary nature which do not constitute participating interests for the purpose of this control relationship include market-makers' holdings in a trading book.
- (3) Section 260(4) of the Companies Act 1985 states that an interest held on behalf of an *undertaking* is treated as held by it. Thus, if the chain of ownership includes a trust, the *FSA* will treat the trustees as legal owners when determining whether it considers there to be a *close link*. The beneficiaries or settlors of a trust (or both) may also come within the scope of these provisions, depending on the terms of the trust. However, the *FSA* will consider each case on its merits.

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The provisions of Schedule 10A to the Companies Act 1985 (Parent and subsidiary undertakings supplementary provisions) explain and supplement the provisions of section 258 in Part VII of the Companies Act 1985 (outlined in COND 2.3.7G(1)(a) to (f)).

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Section 420(3) of the *Act* (Parent and subsidiary undertaking) (supplemented by paragraph 3(3) of Schedule 6 to the *Act*) states that an *incorporated friendly society* is a *parent undertaking* of another *body corporate* (a *subsidiary undertaking*) if it has the following relationship to it:

- (1) it holds a majority of the voting rights in the *subsidiary undertaking*; or
- (2) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of the *subsidiary undertaking's* board of *directors*; or
- (3) 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 it.

**2.3.11**

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For the purposes of this *threshold condition 3* (Close links), an *undertaking* is a *subsidiary undertaking* of another *undertaking* if:

- (1) the other undertaking (its parent) is a member of the *undertaking*;
- (2) a majority of the *undertaking's* board of *directors* 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
- (3) no one else is the *parent undertaking* of the *undertaking* under COND 2.3.7G(1)(a) to (c) or COND 2.3.10G(1) or (2).

**2.3.12**

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The *guidance* in COND 2.3 is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 1985, the Companies (Northern Ireland) Order 1986, the Friendly Societies Act 1992 and the *Seventh Company Law Directive*, or obtaining appropriate professional advice.

## 2.4 Threshold condition 4: Adequate resources

2.4.1 Table Paragraph 4, Schedule 6 to the Act

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- (1) The resources of the person concerned must, in the opinion of the [FSA], be adequate in relation to the regulated activities that he seeks to carry on, or carries on.**
- (2) In reaching that opinion, the [FSA] may–**
- (a) **take into account the person's membership of a group and any effect which that membership may have; and**
- (b) **have regard to–**
- (i) **the provision he makes and, if he is a member of a group, which other members of the group make in respect of liabilities (including contingent and future liabilities); and**
- (ii) **the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business.**

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- (1) *Threshold condition 4* (Adequate resources), requires the *FSA* to ensure that a *firm* has adequate resources in relation to the specific *regulated activity* or *regulated activities* which it seeks to carry on, or carries on.
- (2) In this context, the *FSA* will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, 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.
- (3) High level systems and control requirements are in *SYSC*. Detailed financial resources and systems requirements are in the relevant section of *IPRU*, including specific provisions for particular types of *regulated activity*. The *FSA* will consider whether the *firm* is ready, willing and organised to comply with these requirements when assessing if it has adequate resources for the purposes of this *threshold condition*.

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- (1) When assessing this *threshold condition*, the *FSA* may have regard to any *person* appearing to it to be, or likely to be, in a relevant relationship with the *firm*, in accordance with section 49 of the *Act* (Persons connected with an applicant); for example, a *firm's* *controllers*, its *directors* or *partners*, other *persons* with *close links* to the *firm* (see *COND 2.3*), and other *persons* that exert influence on the *firm* which might pose a risk to the *firm's* satisfaction of the *threshold conditions* and would, therefore, be in a relevant relationship with the *firm*.
- (2) In particular, although it is the *firm* that is being assessed, the *FSA* may take into consideration the impact of other members of the *firm's* *group* on the adequacy of its resources. For example, the *FSA* may assess the consolidated

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- solvency of the *group*. The *FSA*'s approach to the consolidated supervision of a *firm* and its *group* is in the relevant part of *IPRU*.
- (1) When assessing whether a *firm* will satisfy and continue to satisfy *threshold condition 4*, the *FSA* will have regard to all relevant matters, whether arising in the *United Kingdom* or elsewhere.
  - (2) Relevant matters may include but are not limited to:
    - (a) whether there are any indications that the *firm* may have difficulties if the application is granted (see *COND 2.4.6G*), at the time of the grant or in the future, in complying with any of the *FSA*'s prudential *rules* (see the relevant part of *IPRU*);
    - (b) 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 2.4.6G*) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times; see *SYSC 3.1* (Systems and Controls) and *SYSC 3.2* (Areas covered by systems and controls); and
    - (e) whether the *firm* has conducted enquiries into the financial services sector in which it intends to conduct business (see *COND 2.4.6G*) that are sufficient to satisfy itself that:
      - (i) it has access to adequate capital, by reference to the *FSA*'s prudential requirements, to support the business including any losses which may be expected during its start-up period; and
      - (ii) *Client money, deposits, custody assets* and *policyholders'* rights will not be placed at risk if the business fails.
  - (3) In the context of *threshold condition 4* (Adequate resources), the *FSA* will only take into account relevant matters which are material (see *COND 1.3.3G*). The *FSA* will consider the materiality of each relevant matter in relation to the

*regulated activities* for which the *firm* has, or will have, *permission*, having regard to the *regulatory objectives* in section 2 of the *Act* (The FSA's general duties). It should be noted that a series of matters may be significant when taken together, even if each of them in isolation might not be significant.

- (4) In making its assessment, the *FSA* will consider the individual circumstances of each *firm* on a case-by-case basis.

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In complying with SYSC 3.1.1R (Systems and controls), a *firm* should plan its business appropriately so that it is able to identify, measure and manage the likely risks of regulatory concern it will face (SYSC 3.2.17G (Business strategy)).

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- (1) Any newly-formed *firm* can be susceptible to early difficulties. These difficulties could arise from a lack of relevant expertise and judgment, or from ill-constructed and insufficiently tested business strategies. A *firm* may also be susceptible to difficulties where it substantially changes its business activities.
- (2) As a result, the *FSA* would expect a *firm* which is applying for *Part IV permission*, or a substantial variation of that *permission*, to take adequate steps to satisfy itself and, if relevant, the *FSA* that:
- (a) it has a well constructed business plan or strategy plan for its product or service which demonstrates that it is ready, willing and organised to comply with the relevant requirements in *IPRU* and SYSC that apply to the *regulated activity* it is seeking to carry on;
  - (b) its business plan or strategy plan has been sufficiently tested; and
  - (c) the financial and other resources of the *firm* are commensurate with the likely risks it will face.
- (3) The *FSA* would expect the level of detail in a *firm's* business plan or strategy plan in (2) to be appropriate to the complexity of the *firm's* proposed *regulated activities* and *unregulated activities* and the risks of regulatory concern it is likely to face (see SYSC 3.2.11G (Management information)). General *guidance* on the contents of a business plan is given in the business plan section of the application pack for *Part IV permission*. A *firm* requiring specific *guidance* on the contents and level of detail of its business plan should contact the Corporate Authorisation department (see *AUTH 3: Applications for Part IV permission*), or, if relevant, its usual supervisory contact at the *FSA*, or seek professional assistance.



## 2.5 Threshold condition 5: Suitability

2.5.1

Table Paragraph 5, Schedule 6 to the Act

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**The person concerned must satisfy the [FSA] that he is a fit and proper person having regard to all the circumstances, including–**

- (a) his connection with any person;**
- (b) the nature of any regulated activity that he carries on or seeks to carry on; and**
- (c) the need to ensure that his affairs are conducted soundly and prudently.**

2.5.2

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- (1) *Threshold condition 5* (Suitability), requires the *firm* to satisfy the *FSA* that it is 'fit and proper' to have *Part IV permission* having regard to all the circumstances, including its connections with other *persons*, the range and nature of its proposed (or current) *regulated activities* and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently (see also *PRIN* and *SYSC*).
- (2) The *FSA* will also take into consideration anything that could influence a *firm's* continuing ability to satisfy this *threshold condition*. 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 IV permission* to carry on additional *regulated activities* once it has been granted that *permission* by the *FSA*.

2.5.3

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- (1) The emphasis of this *threshold condition* is on the suitability of the *firm* itself. The suitability of each *person* who performs a *controlled function* will be assessed by the *FSA* under the *approved persons* regime (see *AUTH 6* (Approved persons), *SUP 10* (Approved persons) and *FIT*). In certain circumstances, however, the *FSA* may consider that the *firm* is not suitable because of doubts over the individual or collective suitability of *persons* connected with the *firm*.
- (2) When assessing this *threshold condition* in relation to a *firm*, the *FSA* may have regard to any *person* appearing to it to be, or likely to be, in a relevant relationship with the *firm*, as permitted by section 49 of the *Act* (Persons connected with an applicant) (see *COND 2.4.3G*).

2.5.4

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- (1) When determining whether the *firm* will satisfy and continue to satisfy *threshold condition 5*, the *FSA* will have regard to all relevant matters, whether arising in the *United Kingdom* or elsewhere.
- (2) Relevant matters include, but are not limited to, whether a *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) The FSA will take into account relevant matters only to the extent that they are significant (see COND 1.3.3G). In determining whether relevant matters are significant to the *firm*, the FSA will consider significance in the context of the suitability of the *firm*, having regard to the *regulatory objectives* in section 2 of the *Act* (The FSA's general duties) a series of matters may be significant when taken together, even if each of them in isolation may not be significant.

(4) In making its assessment, the FSA will, therefore, consider the individual circumstances of each *firm* on a case-by-case basis.

## 2.5.5

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Where a *firm* is applying for *Part IV permission* or a substantial variation of that *permission*, the guidance in COND 2.4.6G is relevant. For the purpose of *threshold condition 5*, however, the FSA would expect the *firm's* business plan or strategy plan to take into account the interests of *consumers* and demonstrate that it is ready, willing and organised to comply with the relevant requirements in the *Handbook* that apply to the *regulated activity* it is seeking to carry on.

### Conducting business with integrity and in compliance with proper standards

## 2.5.6

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In determining whether a *firm* will satisfy, and continue to satisfy, *threshold condition 5* in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters, as referred to in COND 2.5.4G(2), may include but are not limited to whether:

- (1) the *firm* has been open and co-operative in all its dealings with the FSA 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* and 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;
- (2) the *firm* has been convicted, or is connected with a *person* who has been convicted, of any unspent *offence* involving fraud, corruption, perjury, theft, false accounting or other dishonesty, *money laundering*, *market abuse* or *insider dealing*, *offences* under legislation relating to insurance, banking or other financial services, companies, insolvency, consumer credit or consumer protection or any significant tax offence; where relevant, any spent convictions excepted for this purpose under the Rehabilitation of Offenders Act 1974 will be taken into consideration;
- (3) the *firm* has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the FSA, the *Society of Lloyd's* or by other regulatory authorities (including the FSA's predecessors), *clearing houses* or *exchanges*, *professional bodies* or government bodies or agencies; the FSA 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 *FSA'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 *FSA* 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 *FSA* considers such a refusal relevant will depend on the circumstances;
- (6) the *firm* has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system that apply to the *firm* and the *regulated activities* for which it has, or will have, *permission* (see *SYSC* 3.2.6R to *SYSC* 3.2.8R (Compliance));
- (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* and the *regulated activities* for which it has, or will have *permission*;
  - (b) ensure that its *approved persons* (whether or not employed by the *firm*) are aware of those requirements and standards under the *regulatory system* applicable to them;
  - (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* 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 *FSA* 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; and
- (9) the *firm* or a *person* connected with the *firm* has ever been disqualified from acting as a *director*.

### Competent and prudent management and exercise of due skill, care and diligence

In determining whether a *firm* will satisfy and continue to satisfy *threshold condition* 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters, as referred to in *COND* 2.5.4G(2), may include, but are not limited to whether:

- (1) 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*;
- (2) if 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 (see SYSC 3.2.15G (Audit Committee));
- (3) 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 (see SYSC 2.1 (Apportionment of responsibilities) and SYSC 3.2 (Areas covered by systems and controls));
- (4) those *persons* who perform *controlled functions* under certain *arrangements* entered into by the *firm* or its contractors (including *appointed representatives*) act with due skill, care and diligence in carrying out their *controlled function* (see APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see APER 4.7 (Statement of Principle 7));
- (5) the *firm* has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the *regulatory system* (see SYSC 3.1 (Systems and Controls));
- (6) the *firm* has approached the control of financial and other risk in a prudent manner (for example, by not assuming risks without taking due account of the possible consequences) and has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed (see SYSC 3.2.10 (Risk assessment));
- (7) 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;
- (8) 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 (see, for example, SYSC 3.2.13G (Employees and agents));
- (9) the *firm* has conducted enquiries (for example, through market research or the previous activities of the *firm*) that are sufficient to give it reasonable assurance that it will not be posing unacceptable risks to *consumers* or the *financial system*;
- (10) the *firm* has in place the appropriate *money laundering* prevention systems and training, including identification, record-keeping and internal reporting procedures (see *ML*); and
- (11) where appropriate, the *firm* has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted (see SUP 3.4 (Auditors' qualifications) and SUP 4.3.8G to SUP 4.3.13G (Appointed actuary's qualifications)).

## 2.6 Additional conditions

2.6.1

Table Paragraph 8, Schedule 6 to the Act.

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- (1) If this paragraph applies to the person concerned, he must, for the purposes of such provisions of this Act as may be specified, satisfy specified additional conditions.**
- (2) This paragraph applies to a person who:**
- (a) has his head office outside the EEA; and**
  - (b) appears to the [FSA] to be seeking to carry on a regulated activity relating to insurance business.**

2.6.2

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The application of the *threshold conditions* to *Swiss general insurers* will be the subject of an Order to be made by the Treasury, to recognise the rights of *Swiss general insurance companies* under the *Swiss Treaty Agreement*. This Order will also impose certain additional conditions, required under *the Insurance Directives*, on non-*EEA insurers*. Additional *guidance* will be included in *COND 2* when these orders are made.

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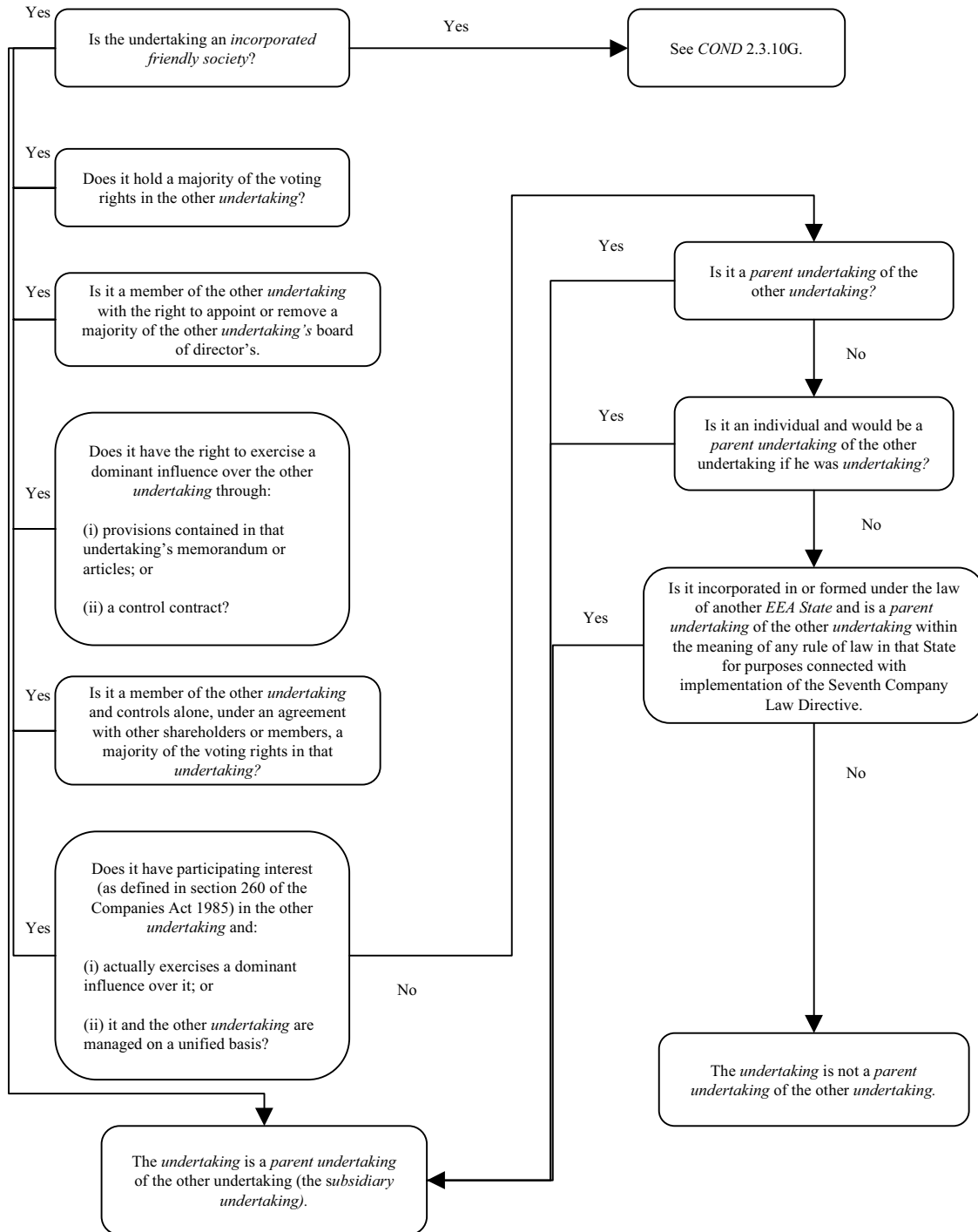
## The threshold conditions

### G

Close Links: is an undertaking the parent undertaking of another undertaking (COND 2.3.7G(2))

# COND 2: The threshold conditions

# Annex 1 G



## Handbook Modules

### Schedule1 Record Keeping Requirements

1            G  
              Table

There are no record keeping requirements in *COND*.

## Handbook Modules

### Schedule2 Notification Requirements

1            G  
              Table

There are no notification or reporting requirements in *COND*, but *guidance* is given in *COND* 1.3.3G on disclosure to the *FSA* in connection with applications.



## Handbook Modules

### Schedule3 Fees and other required payments

1            G  
              Table

There are no requirements for fees or other payments in *COND*.

## Handbook Modules

### Schedule4 Powers exercised

1            G  
              Table

The following power in the *Act* has been exercised by the *FSA* to give the *guidance* in *COND*:

Section 157(1) (Guidance).

## Handbook Modules

### Schedule 5 Action for damages for contravention under section 150 of the Act

1            G  
                 Table

There are no *rules* in *COND*.

## Handbook Modules

### Schedule6 Rules that can be waived

1            G            Table

There are no *rules* in *COND*.

## **Threshold Conditions**

### **Derivations**

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There is no table of derivations in *COND*.

## **Threshold Conditions**

### **Destinations**

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There is no table of destinations in *COND*.