

Status: Point in time view as at 26/07/2013.

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SCHEDULES

SCHEDULE 6

THRESHOLD CONDITIONS

Modifications etc. (not altering text)

C1 Sch. 6 modified (3.9.2001) by [S.I. 2001/2507](#), [arts. 1\(1\), 3\(1\)](#); [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

[^{F1}PART 1B

PART 4A PERMISSION: AUTHORISED PERSONS WHO ARE NOT PRA-AUTHORISED PERSONS

Textual Amendments

F1 Sch. 6 Pts. 1-1G substituted for Sch. 6 Pts. 1, 2 (1.4.2013) by [The Financial Services and Markets Act 2000 \(Threshold Conditions\) Order 2013 \(S.I. 2013/555\)](#), [arts. 1, 2\(2\)](#)

Introduction

- 2A. If the person concerned (“A”) carries on, or is seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity, the threshold conditions that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F.

Location of offices

- 2B. (1) Unless sub-paragraph (3) [^{F2}, (4)(a) or (7)] applies, if A is a body corporate incorporated in the United Kingdom—
- (a) A’s head office, and
 - (b) if A has a registered office, that office,
- must be in the United Kingdom.
- (2) If A is not a body corporate but A’s head office is in the United Kingdom, A must carry on business in the United Kingdom.
- (3) If—
- (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
 - (b) A is a body corporate with no registered office, and
 - (c) A’s head office is in the United Kingdom,
- A must carry on business in the United Kingdom.

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- (4) If A is seeking to carry on, or is carrying on, an insurance mediation activity—
- (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
 - (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2) as having a head office in the United Kingdom if A is resident in the United Kingdom.
- (5) "Insurance mediation activity" means any of the following activities—
- (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in paragraphs (a) to (d).
- (6) Sub-paragraph (5) must be read with—
- (a) section 22,
 - (b) any relevant order under that section, and
 - (c) Schedule 2.
- [^{F3}(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, [^{F4}a full-scope UKAIFM, A's head office and registered office must be in the United Kingdom.][^{F4}a full-scope UKAIFM—
- (a) A's head office and registered office must be in the United Kingdom, or
 - (b) A's registered office must be in a country that is not an EEA State.]]

Textual Amendments

- F2** Words in Sch. 6 para. 2B(1) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 36(a)**
- F3** Sch. 6 para. 2B(7) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 36(b)**
- F4** Words in Sch. 6 para. 2B(7) substituted (coming into force in accordance with reg. 1(3) of the amending S.I.) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013 \(S.I. 2013/1797\)](#), reg. 1(3), **Sch. 2 para. 1(6)**

Effective supervision

- 2C. (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including—
- (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
 - (b) the complexity of any products that A provides or will provide in carrying on those activities;
 - (c) the way in which A's business is organised;
 - (d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;

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- (e) whether A is subject to consolidated supervision required under any of the relevant directives;
- (f) if A has close links with another person (“CL”)—
 - (i) the nature of the relationship between A and CL,
 - (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of A, and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of A.

[^{F5}(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.]

- (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.

Textual Amendments

F5 Sch. 6 para. 2C(1A) inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(19)**
(a)

Appropriate resources

- 2D. (1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A has appropriate resources include—
 - (a) the nature and scale of the business carried on, or to be carried on, by A;
 - (b) the risks to the continuity of the services provided by, or to be provided by, A;
 - (c) A’s membership of a group and any effect which that membership may have.
- (3) [^{F6}Except in a case within sub-paragraph (3A), the matters] which are relevant in determining whether A has appropriate financial resources include—
 - (a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities;
 - (b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A’s business.

[^{F7}(3A) Where the only regulated activities that A carries on, or seeks to carry on, are relevant credit activities, A has adequate financial resources if A is capable of meeting A’s debts as they fall due.]

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- (4) The matters which are relevant in determining whether A has appropriate non-financial resources include—
- (a) the skills and experience of those who manage A's affairs;
 - (b) whether A's non-financial resources are sufficient to enable A to comply with—
 - (i) requirements imposed or likely to be imposed on A by the FCA in the exercise of its functions, or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

Textual Amendments

- F6** Words in Sch. 6 para. 2D(3) substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(19)(b)(i)**
- F7** [Sch. 6 para. 2D\(3A\)](#) inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(19)(b)(ii)**

Suitability

- 2E. A must be a fit and proper person having regard to all the circumstances, including—
- (a) A's connection with any person;
 - (b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
 - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
 - (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
 - (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;
 - (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;
 - (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

Business model

- 2F. (1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include—
- (a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;

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- (b) the interests of consumers;
- (c) the integrity of the UK financial system.

[^{F8}(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.]

Textual Amendments

F8 Sch. 6 para. 2F(3) inserted (26.7.2013 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), **10(19)(c)**

Interpretation

[^{F9}2G. (1) In this Part of this Schedule, each of the following is a “relevant credit activity”—

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in the case specified in sub-paragraph (3), (4) or (5),
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
- (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
- (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,
- (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements),
- (f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of paragraphs (a) to (e), or
- (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any of the activities specified in paragraphs (a) to (f).

(2) But an activity is not a relevant credit activity for the purposes of—

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- (a) paragraph (a) to (e) of sub-paragraph (1), and
 - (b) paragraph (g) of that sub-paragraph so far as it relates to activities of the kind specified by any of those paragraphs,

if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.
- (3) The case specified in this sub-paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).
- (4) The case specified in this sub-paragraph is where the activity relates to a green deal plan.
- (5) The case specified in this sub-paragraph is where the activity relates to a consumer hire agreement where the goods being hired is a vehicle.
- (6) For the purposes of this paragraph—
 - “borrower” includes—
 - (a) any person providing a guarantee or indemnity under an agreement, and
 - (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within paragraph (a) have passed by assignment or operation of law;
 - “conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;
 - “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;
 - “domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);
 - “green deal plan” has the meaning given by section 1 of the Energy Act 2011;
 - “hire-purchase agreement” has the meaning given by the Regulated Activities Order;
 - “not-for-profit body” means a body which, by virtue of its constitution or any enactment—
 - (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
 - (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);
 - “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - “regulated credit agreement” has the meaning given by the Regulated Activities Order;

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“supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).]]

Textual Amendments

- F9** Sch. 6 para. 2G inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013](#) (S.I. 2013/1881), arts. 1(2)(6), **10(19)(d)**

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