



# Threshold Conditions

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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 solvency of the *group*. The *FSA's* approach to the consolidated supervision of a *firm* and its *group* is in the relevant part of the Prudential Standards part of the *Handbook* .

## 2.4.4

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- (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 2.4.6 G), 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 the Prudential Standards part of the *Handbook* );
  - (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 2.4.6 G) 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) , ■ SYSC 3.2 (Areas covered by systems and controls) and ■ SYSC 4.1.1 R (Organisational requirements) ; and
  - (e) whether the *firm* has conducted enquiries into the financial services sector in which it intends to conduct business (see ■ COND 2.4.6 G) 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 1.3.3 G). 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.

## 2.4.5

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In complying with SYSC (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 3.2.17 G (Business strategy) and ■ SYSC 7 (Risk Control) ).

## 2.4.6

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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 the Prudential Standards part of the *Handbook* 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 3.2.11 G (Management information) and ■ SYSC 7 (Risk control) ). Notes on the contents of a business plan are 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 Firm Contact Centre (020 7066 3954), or, if relevant, its usual supervisory contact at the FSA, or seek professional assistance.

## 2.5 Threshold condition 5: Suitability

### 2.5.1 **D** Table Paragraph 5, Schedule 6 to the Act

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 **G**
- (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 **G**
- (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 **■ 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 2.4.3 G**).
  - (3) In relation to a *firm* which is an *EEA regulated entity*, the *Financial Groups Directive* provides that the FSA should consult other competent authorities when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity in the same group.

## 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 1.3.3 G). 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 2.4.6 G 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 2.5.4 G (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 criminal offence; this must include, where provided for by the Exceptions Order to the Rehabilitation of Offenders Act 1974, any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the *United Kingdom* or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking

- and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, *money laundering*, market manipulation or *insider dealing* ;
- (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 3.2.6 R to ■ SYSC 3.2.8 R (Compliance) and ■ SYSC 6.1.1 R to ■ SYSC 6.1.5 R );
  - (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

2.5.7

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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 2.5.4 G (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 COND 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) and ■ SYSC 4.1.1 R (General organisational requirements) );
- (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) and ■ SYSC 4.1 (General organisational requirements) );
- (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 G (Risk assessment) and ■ SYSC 7.1 (Risk control) );
- (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 3.2.13 G (Employees and agents) and ■ SYSC 5.1 (Employees, agents and other relevant persons) );
- (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 systems and controls against *money laundering* of the sort described in ■ SYSC 3.2.6 R to ■ SYSC 3.2.6J G and ■ SYSC 6.3 (Financial crime);
- (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 4.3.8 G to ■ SUP 4.3.10 G ( Actuary's qualifications)); and
- (12) in the case of an *insurance intermediary*:
- (a) a reasonable proportion of the *persons* within its management structure who are responsible for the *insurance mediation activity*; and
- (b) all other *persons* directly involved in its *insurance mediation activity*; demonstrate the knowledge and ability necessary for the performance of their duties; and
- (c) all the *persons* in its management structure and any staff directly involved in *insurance mediation activity* are of good repute (see ■ MIPRU 2.3.1 R (Knowledge, ability and good repute)).

## 2.6 Additional conditions

### 2.6.1



Table

#### Paragraph 8 of Schedule 6 to the Act

- (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.

Article 3 of the financial services and Markets Act 2000 (Variation of Threshold Conditions ) Order 2001 (SI 2001/2507)

- 3.- (1) If paragraph 8 of Schedule 6 (additional conditions applying to non-EEA insurers) applies to the person concerned, it must, for the purposes of section 41 and Schedule 6, satisfy the following additional conditions -
  - (a) it must have a representative who is resident in the United Kingdom and who has authority to bind it in its relations with third parties and to represent it in its relations with the [FSA] and the courts in the United Kingdom;
  - (b) subject to paragraph (2), if the person concerned is not a Swiss general insurance company -
    - (i) it must be a body corporate entitled under the law of the place where its head office is situated to effect and carry out contracts of insurance;
    - (ii) it must have in the United Kingdom assets of such value as may be specified;
    - (iii) unless the regulated activity in question relates solely to reinsurance, it must have made a deposit (of money or securities, as may be specified) of such an amount and with such a person as may be specified, and on such terms and subject to such other provisions as may be specified.
- (2) Where the person concerned is seeking to carry on an activity relating to insurance business in one or more other EEA States (as well as in the United Kingdom), and the [FSA] and the supervisory authority in the other EEA State or States concerned so agree -

## Paragraph 8 of Schedule 6 to the Act

- (a) the reference in paragraph (1)(b)(ii) to the United Kingdom is to be read as a reference to the United Kingdom and the other EEA State or States concerned; and
- (b) the reference in paragraph (1)(b)(iii) to such a person as may be specified is to be read as a reference to such a person as may be agreed between the [FSA] and the other supervisory authority or authorities concerned.

- 2.6.2** **G** The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 2001/2507) imposes certain additional conditions on *non-EEA insurers*, as set out above.
- 2.6.3** **G** This order implements requirements under the *Insurance Directives*, and the *Act* extends these requirements to *firms* outside of the *EEA*.
- 2.6.4** **G** The effect of article 3(a) of the order is that a *non-EEA insurer* (including a *Swiss General insurance company*) must appoint an *authorised UK representative*.
- 2.6.5** **G**
- (1) A *non-EEA insurer* must be a *body corporate* formed under the law of the country where its head office is situated.
  - (2) A *person* seeking to carry on *insurance business* in the *United Kingdom* must have assets in the *United Kingdom* to a value specified in *GENPRU* . Where the applicant wants to carry on *insurance business* in other *EEA States*, the applicant must have assets in those other *EEA States* as are agreed between the *FSA* and the supervisory authorities in the other states.
  - (3) Unless the *regulated activity* to be carried on by the applicant relates solely to reinsurance business, the applicant must make a deposit of an amount, and type and on terms with a *person* and agreed between the *FSA* and the supervisory authorities in other *EEA States* where the applicant wishes to carry on *insurance business*. This deposit will be subject to provisions in *INSPRU 1.5* .
- 2.6.6** **G**
- (1) The additional conditions set out in **COND 2.5.6 G (1)**, **(2)** and **(3)** do not apply to *Swiss general insurance companies*.

