

## Chapter 2

# Interpreting the Handbook

2.2 Interpreting the Handbook

Purposive interpretation

- 2.2.1
- R
- Every provision in the *Handbook* must be interpreted in the light of its purpose.
- 2.2.2
- G
- The purpose of any provision in the *Handbook* is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions. The *guidance* given on the purpose of a provision is intended as an explanation to assist readers of the *Handbook*. As such, *guidance* may assist the reader in assessing the purpose of the provision, but it should not be taken as a complete or definitive explanation of a provision's purpose.

Evidential provisions

- 2.2.3
- R
- Any *rule* in the *Handbook* which has the status letter "E" in the margin or heading:

(1) is to be taken also to provide that contravention of the *rule* does not give rise to any of the consequences provided for by provisions of the Act other than section 138C (Evidential provisions); and

(2) incorporates the status letter "E" in the margin or heading as part of the *rule*.
- 2.2.4
- G
- (1) The *rules* to which section 138C of the Act applies ("evidential provisions") are identified in the *Handbook* by the status letter "E" in the margin or heading.

(2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and ■ GEN 2.2.3 R does not apply to them.

- 2.2.5
- G
- Chapter 6 of the Reader's Guide contains an explanation of the significance of the status letters R, E, G, D, UK, EU, P and C, and includes further information on *Handbook* provisions, including *evidential provisions*.

Use of defined expressions

- 2.2.6
- G
- Expressions with defined meanings appear in italics in the *Handbook*, unless otherwise stated in individual sourcebooks or manuals.

- 2.2.7** **R** In the *Handbook* (except *IPRU*, unless otherwise indicated):
- (1) an expression in italics which is defined in the *Glossary* has the meaning given there; and
  - (2) an expression in italics which relates to an expression defined in the *Glossary* must be interpreted accordingly.
- 2.2.8** **G** Examples of related expressions are:
- (1) "*advice on investments*" and "*advise on investments*", which should be interpreted by reference to "*advising on investments*";
  - (2) "*closely linked*", which should be interpreted by reference to "*close links*";
  - (3) "*controls*" and "*controlled*", which should be interpreted by reference to "*control*";
  - (4) "*effect*", as for example in "*effect a life policy*", which should be interpreted by reference to "*effecting contracts of insurance*"; and
  - (5) "*employment*", which should be interpreted by reference to "*employee*".
- 2.2.9** **G** Unless the context otherwise requires or unless otherwise stated in a particular sourcebook or manual, where italics have not been used, an expression bears its natural meaning (subject to the Interpretation Act 1978; see ■ GEN 2.2.11 R to ■ GEN 2.2.12 G).
- 2.2.10** **G** The Interim Prudential sourcebooks (*IPRU*) have individual arrangements for defined terms and each contains *rules* or *guidance* on its own arrangements. In respect of those sourcebooks, reliance should not be placed on the definitions which appear in the *Glossary* unless otherwise indicated.
- Application of the Interpretation Act 1978** .....
- 2.2.11** **R** The Interpretation Act 1978 applies to the *Handbook*.
- 2.2.12** **G** The application of the Interpretation Act 1978 to the *Handbook* has the effect, in particular, that:
- (1) expressions in the *Handbook* used in the *Act* have the meanings which they bear in the *Act*, unless the contrary intention appears;
  - (2) where reference is made in the *Handbook* to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment, unless the contrary intention appears; and
  - (3) unless the contrary intention appears:

- (a) words in the *Handbook* importing the masculine gender include the feminine and words importing the feminine gender include the masculine;
- (b) words in the *Handbook* in the singular include the plural and words in the plural include the singular.

## Civil partnership - references to stepchildren etc

**2.2.12A** R Any reference in a provision of the *Handbook* made before 5 December 2005 to a stepchild, step-parent, stepdaughter, stepson, stepbrother or stepsister is to be interpreted in accordance with section 246 of the Civil Partnership Act 2004.

**2.2.12B** G ■ **GEN 2.2.12A R** and sections 246 and 247 of the Civil Partnership Act 2004 amend each reference in the *Handbook* to a stepchild, step-parent and certain related expressions to take account of civil partnerships. As a result a reference (for example) to a stepchild of a person (A) includes a reference to the child of the civil partner of A where that child is not A's child.

## Cross-references in the Handbook

- 2.2.13** R
- (1) A reference in the *Handbook* to another provision in the *Handbook* is a reference to that provision as amended from time to time.
  - (2) Unless a contrary intention appears, a reference in the *Handbook* to a provision in the PRA Rulebook is a reference to that provision as amended from time to time.

**2.2.13A** R Unless a contrary intention appears, to the extent that a provision made by the *FCA* ('the referring provision') contains a cross-reference to another provision that is not made by the *FCA* including a provision formerly made by the *PRA* which the *PRA* has now deleted ('the referred provision'), the referred provision as amended from time to time (excepting deletion in its entirety) is to be treated as having been made by the *FCA* to the extent necessary to make the referring provision function with the full effect indicated by the reference.

**2.2.13B** G The purpose of ■ **GEN 2.2.13AR** is to ensure that cross references in the *FCA Handbook* to provisions outside the *FCA Handbook* are effective, including cross references to material that was formerly in the *PRA Handbook* but which the *PRA* has now deleted.

## References to writing

**2.2.14** R If a provision in the *Handbook* refers to a communication, notice, agreement or other *document* "in writing" then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

**2.2.15** G ■ **GEN 2.2.14 R** means that, for example, electronic media may be used to make communications which are required by a provision of the *Handbook* to

be "in writing", unless a contrary intention appears, or the use of electronic media would contravene some other requirement. ■ GEN 2.2.14 R does not, however, affect any other legal requirement which may apply in relation to the form or manner of executing a *document* or agreement.

**2.2.15A** G An example of a requirement relevant to whether a communication required by a provision of the *Handbook* to be "in writing" may be made by use of electronic media is the requirement to treat *customers* fairly under *Principle 6*.

**2.2.16** G "*Document*" is a defined term in the *Glossary*, the definition of which includes information recorded in any form, including electronic form.

### Activities covered by general rules

**2.2.17** R A general *rule* (that is a *rule* made by the *FCA* the *general rule making powers*) is to be interpreted as:

- (1) applying to a *firm* with respect to the carrying on of all *regulated activities*, except to the extent that a contrary intention appears; and
- (2) not applying to a *firm* with respect to the carrying on of *unregulated activities*, unless and then only to the extent that a contrary intention appears.

### Continuity of authorised partnerships and unincorporated associations

**2.2.18** R (1) If a *firm*, which is a partnership or unincorporated association, is dissolved, but its authorisation continues to have effect under section 32 of the *Act* (Partnerships and unincorporated associations) in relation to any partnership or unincorporated association which succeeds to the business of the dissolved *firm*, the successor partnership or unincorporated association is to be regarded as the same *firm* for the purposes of the *Handbook* unless the context otherwise requires.

(2) [deleted]

(3) [deleted]

**2.2.19** G In principle, it is possible to view a change of partners in a partnership, or a change in the membership of the unincorporated association, as the formation of a new partnership or association. ■ GEN 2.2.18 R reflects section 32 of the *Act* (Partnerships and unincorporated associations), which provides for the continuing *authorisation* of partnerships and unincorporated associations following a change in partners or members if certain conditions are satisfied. ■ GEN 2.2.18 R ensures a similar effect to section 32 in relation to the status of the partnership or unincorporated associations as a "*firm*" or "*authorised person*" for the purposes of the *Handbook*.

### Designated investment exchanges

- 2.2.20 **G** In the *Glossary*, the definition of *designated investment exchange* lists certain investment exchanges. Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in ■ GEN 2 Annex 1 G and the obligation to pay the application fee is set out in ■ FEES 3.2.

### Registered persons

- 2.2.20A **G**
- (1) *Registered persons* are able to *communicate financial promotions* relating to *qualifying cryptoassets* in reliance on an exemption in article 73ZA of the *Financial Promotion Order*.
  - (2) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 applies certain powers in the *Act* in relation to *registered persons* in connection with their *communication of financial promotions* in reliance on this exemption.
  - (3) In order to ensure that *registered persons* are subject to appropriate FCA oversight and enforcement in relation to their *communication of financial promotions*, the FCA is able to exercise certain supervisory and enforcement powers under the *Act* in relation to *registered persons*. Where the *Handbook* contains *guidance* on the exercise of these powers in relation to *authorised persons* (in particular, in *SUP*), that *guidance* should be read as also being relevant to *registered persons* (and references to *firms* should be construed accordingly).

- 2.2.21 **G** [deleted]

### Treaty of Lisbon

- 2.2.22 **G** As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires.

### Onshored Regulations and third country firms

- 2.2.22A **R**
- (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *onshored regulations* previously deriving from *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
    - (a) when it carries on *MiFID* or *equivalent third country business*; and
    - (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
  - (2) Paragraph (1) does not apply:
    - (a) to the extent *MiFIR* or an *onshored regulation* previously deriving from *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
    - (b) to *onshored regulations* which were previously *EU regulations* adopted under article 7 of *MiFID*.

- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.
- (4) ■ GEN 2.2.22AR(1) is subject to articles 2A to 2E of *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.
- (5) In relation to *TP firms* ■ GEN 2.2.22AR(1) does not apply requirements imposed by and under *MiFIR* or by the *MiFID Org Regulation* in addition to those referred to in articles 2A to 2E *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.

- 2.2.22B** G
- (1) The purpose of ■ GEN 2.2.22AR is to ensure that a *third country investment firm* should not be treated in a more favourable way than a *UK firm*.
  - (2) ■ GEN 2.2.22AR may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

#### Application of provisions where there are commensurate PRA provisions

- 2.2.23** R
- (1) This *rule* applies to *Handbook* provisions where the *PRA* have made commensurate provisions in the *PRA Rulebook*. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA approved persons*.
  - (2) Where a *Handbook* provision (or part of one) goes beyond the *FCA*'s powers or regulatory responsibilities, it is to be interpreted as applied to the extent of the *FCA*'s powers and regulatory responsibilities only.
  - (3) The extent of a *Handbook* provision is to be interpreted as cut back under (2) by the minimum degree necessary.
  - (4) [deleted]

- 2.2.24** G
- The published Memorandum of Understanding between the *FCA* and the *PRA* describes their regulatory responsibilities.

- 2.2.25** G
- An example of a *rule* being interpreted as cut back by ■ GEN 2.2.23R is ■ SYSC 6.1.1R, which requires a *firm* to maintain adequate policies and procedures to ensure compliance with its obligations under the *regulatory system*; ■ SYSC 6.1.1R should be interpreted as applied by the *FCA* in respect of a *PRA-authorised person's* compliance with regulatory obligations that are the responsibility of the *FCA* (for example, in respect of a *bank* maintaining policies and procedures to ensure compliance with banking conduct requirements in *BCOBS*).
- (1) [deleted]
  - (2) [deleted]
  - (3) [deleted]

2.2.26

**R**

## Rules applying while a firm has temporary permission: the General Rules

Unless the contrary intention appears, a *rule* does not apply to a *TP firm* except that:

- (1) A *rule* which imposed an obligation on a *person* immediately before *IP completion day* who becomes a *TP firm* continues to apply to the *TP firm* to the same extent and to the same activities to which the *rule* applied at that time.
- (2) In addition, a *rule* which deals with a matter (in relation to an activity of a *TP firm* in either (3) or (4)) which immediately before *IP completion day* was reserved to the:
  - (a) *Home State* of the *firm* under an *EU* directive; or
  - (b) where applicable, *EEA state* where the *firm* has the establishment from which the service is provided, under an *EU* directive, also applies to a *TP firm* if and to the extent that that *rule*:
    - (i) applies to a *UK firm* (or other cognate expression) that carries on the same *regulated activity* as the *TP firm*; and
    - (ii) immediately before *IP completion day*, implemented a provision of an *EU* directive (disregarding any provision of a directive which allocates responsibility between different member states).
- (3) A *TP firm* which carries on an activity from its *UK branch* or establishment (or that of its *appointed representative*) does not contravene a *rule* applied by (2) to the extent that:
  - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* (or its *appointed representative*) complied with or applied a provision which implements the same provision of the relevant directive reserved to its *Home State* and imposed by that state's law; and
  - (b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from its *UK branch* or establishment (or that of its *appointed representative*).
- (4) A *TP firm* which carries on an activity other than from its *UK branch* or establishment (or that of its *appointed representative*) into the *United Kingdom* does not contravene a *rule* applied by (2) to the extent that:
  - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied a provision which implements the same provision of the relevant directive reserved to its *Home State* (or, where (2)(b) applies, to the *EEA state* where it has the establishment from which the service is provided) and imposed by that state's law; and
  - (b) the *firm's* compliance with or application of the provision covers the *firm's* activities into the *UK* (or that of its *appointed representative*).
- (5) Paragraph (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.



- (6) Where a *TP firm's Home State* (or, where applicable, the *EEA state* where it has the establishment from which the service is provided) exercises a national discretion expressly permitted by an *EU directive* not to apply a provision which would implement a provision of an *EU directive* referred to in (2) which the *FCA* has chosen to apply as a *rule*, the *TP firm* has no need to comply with or apply the *rule* in question.
- (7) A provision referred to in paragraph (3) or (4) includes a provision where an *EU directive* sets out a number of options, and the state referred to in paragraph (3) or (4) has chosen one or more such options different from those chosen by the *FCA* in order to implement the same provision.

### Amendments to rules applied by the General Rules

2.2.27

**R**

- (1) A *rule* applied by ■ GEN 2.2.26R(1) or ■ GEN 2.2.26R(2):
  - (a) applies with any amendment made to the *rule* in question which comes into force on *IP completion day* to address an issue resulting from the *UK's* withdrawal from the *European Union*;
  - (b) applies until it is deleted after *IP completion day*, or where a *rule* is amended or replaced after *IP completion day* it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
  - (c) only applies to the *firm's* activities carried on from a *UK branch* or establishment (maintained by the *firm* or by its *appointed representative*) or carried on other than from a *UK branch* or establishment into the *UK* (by the *firm* or its *appointed representative*).
- (2) Apart from in *COMP* and ■ FEES 6, where a *rule* (or paragraph of a *rule*) applied by ■ GEN 2.2.26R(1) or ■ GEN 2.2.26R(2):
  - (a) only applied to a *person* which passported into the *United Kingdom* under Schedule 3 or 4 to the *Act*; and
  - (b) is deleted on *IP completion day*;
 deletion is disregarded and it continues to apply to the *TP firm*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.
- (3) Except where paragraph (4) applies, a *TP firm* does not have to comply with paragraph (1)(a) while and to the extent that the *FCA* directs that where the same *rule*:
  - (a) begins to apply to a *firm* other than a *TP firm* (A) as a result of an exit instrument, the *rule* is not to apply to A; or
  - (b) applies to A differently from how it would but for an exit instrument, the obligation is modified so that A does not breach it if A complies with the *rule* as it applied immediately before *IP completion day*.
- (4) In relation to a matter subject to the *FCA's* prudential transitional direction, paragraph (1)(a) does not apply while and to the extent that the *FCA* directs that where the same *rule*:

- (a) begins to apply to a *firm* other than a *TP firm* (A) as a result of an exit instrument, the *rule* is not to apply to A; or
  - (b) applies to A differently from how it would but for an exit instrument, the *rule* shall apply to A as it would have applied immediately before *IP completion day*.
- (5) In this *rule*:
- (a) the reference to the “FCA directs” refers to a direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
  - (b) the expressions “exit instrument” and “relevant obligation” have the meanings in Part 7 of those regulations;
  - (c) the reference to the “FCA’s prudential transitional direction” is to a direction made under Part 7 of those regulations covering prudential matters set out in the direction.

### Modification of rules applied by the General Rules in cases of conflict

2.2.28

**R**

- (1) Where a *rule* in ■ GEN 2.2.26R(1) applies and:
  - (a) as a result of an amendment which comes into force on *IP completion day* which removes a reference to a matter in relation to the *EEA*; and
  - (b) it is no longer practicable for the *TP firm* to comply with the *rule* because of the amendment,
 the *firm* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.
- (2) Where a *rule* applied by ■ GEN 2.2.26R(1) contradicts a *rule* applied by ■ GEN 2.2.26R(2), to the extent necessary the *rule* in ■ GEN 2.2.26R(2) does not apply.
- (3) Where as a result of the *UK*’s withdrawal from the *EU* different provisions (than those which applied to the *person* immediately before *IP completion day*) apply in an *EEA State* to a *TP firm* and if as a result of complying with a *rule* applied by ■ GEN 2.2.26R(2) the *firm* would contravene a provision in that *EEA State*, the *rule* in ■ GEN 2.2.26R(2), to the extent necessary, does not apply.

### MiFID technical standards

2.2.29

**R**

- (1) The provisions, as amended on or after *IP completion day*, in (2) apply to a *TP firm* which is an *EEA MiFID investment firm* as if it were a *MiFID investment firm* when the following conditions are met:
  - (a) where it carries on *MiFID or equivalent third country business*; and
  - (b) that business is carried on from a *UK branch* (maintained by the *firm* or its *appointed representative*) or, where it is carried on other than from a *UK branch*, that business is provided into the *United Kingdom* (by the *firm* or its *appointed representative*).

- (2) The provisions referred to in (1) are technical standards deriving from previously adopted *EU regulations* under *MiFID* which are retained EU law, except:
  - (a) those deriving from previously adopted *EU regulations* under article 7 of *MiFID*;
  - (b) those deriving from previously adopted *EU regulations* under article 32(2) and (3) of *MiFID* where they apply to a *firm* other than a *TP firm operating an organised trading facility* or acting as a *systematic internaliser* from a *branch* in the *United Kingdom*; or
  - (c) to the extent that their application to a *TP firm* would be inconsistent with the application to that *firm* of Chapter 5 of the *MiFID Org Regulation* or ■ **MAR 10.4**.
- (3) A *TP firm* which carries on business from a *UK branch* (maintained by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
  - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
  - (b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from the *UK branch* (maintained by the *firm* or its *appointed representative*).
- (4) A *TP firm* which carries on business other than from a *UK branch* into the *United Kingdom* (by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
  - (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
  - (b) the *firm's* compliance with or application of the provision covers the *firm's* or its *appointed representative's* activities in the *UK*.
- (5) A *rule* in (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.
- (6) Neither of paragraphs (3) and (5) apply to *rules* applied by (1) which are provisions deriving from previously adopted *EU regulations* under article 27 of *MiFID*.

### Rules and guidance applying while a firm has temporary permission – capital adequacy requirements

2.2.30

**R**

- (1) Nothing in *GENPRU*, *MIFIDPRU*, *INSPRU*, *MIPRU*, *IPRU(FSOC)*, *IPRU(INS)* or *IPRU(INV)* applies to a *TP firm*, except for the provisions in (2).
- (2) To the extent a *TP firm* carries on the relevant *regulated activity*, the following apply by virtue of ■ **GEN 2.2.26R**:
  - (a) ■ **INSPRU 1.5.33R**;
  - (b) *MIPRU*;

2.2.31

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(c) *IPRU(FSOC)*; and

(d) ■ *IPRU(INV)* 5, 6, ■ 12 and 13, except that *rules* relating to capital adequacy in these chapters, which would apply to a *TP firm* through the operation of ■ GEN 2.2.26R(2), do not apply to that *TP firm*. Specifically, the financial resources requirements for *depositories* of *UCITS* schemes and *depositories* of certain *AIFs* in ■ *IPRU(INV)* 5, and requirements involving the holding of professional indemnity insurance which relate to capital adequacy in ■ *IPRU(INV)* 13.

- (1) ■ GEN 2.2.30R operates by excluding the application of the sourcebooks contained in the Prudential Standards part of the *FCA Handbook*, except for the sourcebooks or parts of sourcebooks referred to in ■ GEN 2.2.30R(2).
- (2) The sourcebooks referred to in ■ GEN 2.2.30R(2) contain *rules* that may apply to a *TP firm* either by virtue of ■ GEN 2.2.26R(1) if they applied to that *firm* immediately before *IP completion day*, or *rules* that may apply to a *TP firm* by virtue of ■ GEN 2.2.26R(2) if the conditions in that provision are met, and the *rule* does not relate to capital adequacy.
- (3) The approach in ■ GEN 2.2.30R to applying *rules* relating to capital adequacy to a *TP firm* is generally to ensure that the *firm* is only subject to those *rules* that applied to it immediately before *IP completion day*. Therefore, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *IP completion day*.
- (4) The sourcebooks referred to in ■ GEN 2.2.30R(2) contain some *rules* which do not relate to capital adequacy. Such *rules* may apply to *TP firms* by virtue of ■ GEN 2.2.26R. Certain of these *rules* may apply to *TP firms* by virtue of ■ GEN 2.2.26R(2), as follows:
  - (a) *rules* in ■ MIPRU 2.2 (Allocation of the responsibility for insurance distribution activity or MCD credit intermediation activity);
  - (b) certain of the *rules* in ■ MIPRU 3.2 (Professional indemnity insurance requirements);
  - (c) *rules* in ■ MIPRU 5.2 (Use of intermediaries); and
  - (d) certain of the *rules* in ■ IPRU(INV) 13.1 (Application, general requirements and professional indemnity insurance requirements).
- (5) The sourcebooks contained in the Prudential Standards part of the *FCA Handbook* are not the only sourcebooks which include *rules* relating to capital adequacy. For example, see the *rules* in ■ CONC 10 and ■ MAR 8. The capital adequacy requirements in such other sourcebooks may apply to a *TP firm* by virtue of ■ GEN 2.2.26R, to the extent the *firm* carries on the relevant *regulated activity*. However, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *IP completion day*.
- (6) For the purpose of this *guidance*, *rules* relating to capital adequacy comprise *rules* relating to the adequacy of a *firm's* financial resources, including both capital resources and liquidity resources. However,

*rules* relating to capital adequacy do not include *rules* involving the holding of professional indemnity insurance, except where such *rules* are tied to capital adequacy requirements by a form of optionality. Therefore, *rules* involving the holding of professional indemnity insurance may apply to a *TP firm* by virtue of ■ GEN 2.2.26R, but if such *rules* are tied to capital adequacy requirements, they cannot apply by virtue of ■ GEN 2.2.26R(2).

### Rules applying while a firm has temporary recognition – general – TP UCITS qualifiers and TP AIFM qualifiers

2.2.32

**R**

- (1) Unless the contrary intention appears, a *rule* does not apply to a *TP UCITS qualifier* or a *TP AIFM qualifier*, except that in relation to a *scheme* or a *sub-fund* a *rule* which imposed an obligation on a *person* immediately before *IP completion day* who becomes a *TP UCITS qualifier* or a *TP AIFM qualifier* continues to apply to that *person* to the same extent and to the same activities to which the *rule* applied at that time.
- (2)
  - (a) If after *IP completion day* a *person* becomes a *TP UCITS qualifier* in relation to a *new sub-fund* then, unless the contrary intention appears, a *rule* which would have imposed an obligation on that *person* immediately before *IP completion day* had that *new sub-fund* been recognised under section 264 of the *Act* at that time applies to the *TP UCITS qualifier*.
  - (b) A *rule* in (a) applies in relation to the *new sub-fund* to the same extent and to the same activities to which the *rule* would have applied had that *new sub-fund* been recognised under section 264 of the *Act*. immediately before *IP completion day*.

### Amendments to rules applied to TP AIFM qualifiers and TP UCITS qualifiers

2.2.33

**R**

- (1) A *rule* applied by ■ GEN 2.2.32R:
  - (a) applies with any amendment made to the *rule* in question which comes into force on *IP completion day* arising from the *United Kingdom's* exit from the *European Union*;
  - (b) applies until it is deleted after *IP completion day*, or, where a *rule* is amended or replaced after *IP completion day*, it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
  - (c) only applies to the *firm's* activities in relation to the *AIF* or the *scheme* in the *United Kingdom*.
- (2) Where a *rule* (or paragraph of a *rule*) applied by ■ GEN 2.2.32R:
  - (a) only applied to a *person* who was an authorised person by virtue of paragraph 1(1) of Schedule 5 to the *Act*; and
  - (b) is deleted on *IP completion day*;deletion is disregarded and it continues to apply to the *TP UCITS qualifier* or *TP AIFM qualifier*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.

- (3) A *TP UCITS qualifier* or a *TP AIFM qualifier* does not have to comply with paragraph (1)(a) while and to the extent that the *FCA* directs that where the same *rule*:
  - (a) begins to apply to a *firm* other than a *TP firm*, *TP UCITS qualifier* or a *TP AIFM qualifier* (A) as a result of an exit instrument, it is not to apply to A; or
  - (b) applies to A differently from how it would have but for an exit instrument, the obligation is modified so that A does not breach it if it complies with the *rule* as it applied immediately before *IP completion day*.
- (4) In paragraph (3):
  - (a) the reference to the “*FCA directs*” is to a direction made by *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
  - (b) the expressions “exit instrument” and “relevant obligation” have the meanings in Part 7 of those regulations.

#### Modification of rules applied to TP AIFM qualifiers and TP UCITS qualifiers

2.2.34

**R**

- (1) Where a *rule* in ■ GEN 2.2.32R applies and:
  - (a) as a result of an amendment which comes into force on *IP completion day* which removes a reference to a matter in relation to the *EEA*; and
  - (b) it is no longer practicable for the *TP UCITS qualifier* or the *TP AIFM qualifier* to comply with the *rule* because of the amendment,
 the *TP UCITS qualifier* or the *TP AIFM qualifier* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.
- (2) If as a result of:
  - (a) the *UK*’s withdrawal from the *EU*; and
  - (b) complying with a *rule* applied by ■ GEN 2.2.32R,
 a *TP UCITS qualifier* or a *TP AIFM qualifier* would contravene a provision in its *Home State*, the *rule* applied by ■ GEN 2.2.32R which caused the contravention, to the extent necessary, does not apply.

#### Guidance applying while a firm has temporary permission

2.2.35

**R**

- Unless the contrary intention appears, *guidance* does not apply to a *TP firm*, a *TP UCITS qualifier* or a *TP AIFM qualifier* except that:
- (1) *guidance* on or in connection with a *rule* applied by ■ GEN 2.2.26R(1) applies to a *TP firm* to the same extent as that *rule*;
  - (2) *guidance* on or in connection with a *rule* applied by ■ GEN 2.2.26R(2) applies to a *TP firm* to the same extent as that *rule*;



- (3) *guidance* on or in connection with a *rule* applied by ■ GEN 2.2.32R applies to a *TP UCITS qualifier* and a *TP AIFM qualifier* to the same extent as that *rule*; and
- (4) to the extent that an enactment, other than a *rule*, applies to both a *TP firm* and a *firm* with a *Part 4A permission* granted by the *FCA* or *PRA*, *guidance* on, or in connection with, that enactment (or relevant part of that enactment) applies to a *TP firm* to the same extent as it applies to a *firm* with *Part 4A permission* granted by the *FCA* or *PRA*. To the extent an enactment is modified for the purposes of the *EU Exit Passport Regulations*, *guidance* on, or in connection with, that enactment must be read subject to those modifications. This provision applies *mutatis mutandis* to *guidance* which applies to a *TP UCITS qualifier* or a *TP AIFM qualifier*.

**2.2.35A** G A *TP firm* should refer to the provisions listed below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

■ PRIN 3.1.13R,

■ COBS 1.1.1CR,

■ COBS 2.2.-1R,

■ COBS 4.12A.3R

■ COBS 4.12B.1R

■ COBS 10.1.2R,

■ COBS 14.3.1R

and ■ COBS 22.6.1R,

[deleted]

■ ICOBS 1 Annex 1, Part 1, Who? (paragraph 7)

■ PROD 1.3.-1AR

and

■ PROD 1.4.-1AR

■ SUP 16.28.7R

■ SUP 16.1.3R,

■ SUP 16.27.2R

and ■ SUP 16.27.8R

### Purpose

**2.2.36** G (1) The approach to what rules apply to *TP firms* is broadly to apply *rules* to *TP firms* which applied to them immediately prior to *IP completion day*, whether those rules applied in the United Kingdom (as was the case for host state *rules*) or, where rules are directive-based, in the *firm's Home State* or, where relevant under an *EU* measure in relation to which the law of the country of origin applies, the state where the establishment is located and from which the *firm's* service is provided.

- (2) The Glossary definitions of *TP firm* and *temporary permission* each include both *firms* that enter the temporary permission or temporary variation regime set out in Part 3 of the *EU Exit Passport Regulations* and *firms* that enter the financial services contracts regime set out in Part 6 of the *EU Exit Passport Regulations* on or after *IP completion day*.
- (3) ■ GEN 2.2.26R (1) and ■ GEN 2.2.33R refer to “a rule which imposed an obligation on a *person*”. This is to distinguish a *rule* which imposes substantive obligations from a *rule* which sets out the application of *rules*.
- (4) ■ GEN 2.2.26R to ■ GEN 2.2.35R apply *rules* and *guidance* to *firms* which before *IP completion day* had passporting rights by virtue of the Treaty on the Functioning of the European Union, or of that Treaty as applied by the Agreement on the European Economic Area signed at Oporto on 2 May 1992 whose parties consist of the EEA States.
- (5) The application of *rules* and *guidance* to *TP firms* under Part 3 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 3 of those Regulations, which is to allow *TP firms* to continue to carry on *regulated activities* in the *United Kingdom*, or of the purpose of the temporary recognition regime for *TP UCITS qualifiers* or for *TP AIFM qualifiers* to continue to market funds in the *United Kingdom*. In each case that purpose takes into account that the legal framework underpinning cross border financial services has changed because the *Treaty*, EU regulations and EU directives no longer apply in the *United Kingdom* by virtue of EU law.
- (6) For a *TP firm* under Part 3 of the *EU Exit Passport Regulations* the scope of authorisation of an EEA-based *firm* which qualified for authorisation under Schedule 3 or 4 to the *Act* is preserved. Those Regulations do not extend the means by which a *TP firm* can carry on *regulated activities* in the *United Kingdom*, which remain limited (leaving aside top-up permission) to those which were available under the Treaty on the Functioning of the European Union, for example, a *firm* carrying on *regulated activities* in the *United Kingdom* from an establishment outside of the EEA cannot rely upon this means to do so. For a *TP firm* under Part 6 of the *EU Exit Passport Regulations*, the scope of the *firm’s permission* is further limited by what is permitted under regulation 33 or 40 of those *Regulations*.
- (7) The General Rules also apply where *regulated activities* have been amended on *IP completion day*, because the purpose of *temporary permission* is to enable *TP firms* to continue to carry on such *regulated activities* in the *United Kingdom*.
- (8) Part 6 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 enables a *new sub-fund* to be a recognised scheme for the purposes of Part 17 of the *Act* in certain circumstances. Therefore, the purpose of ■ GEN 2.2.32R(2) is to ensure that a *rule* applies to a *TP UCITS qualifier* in relation to a *new sub-fund* if that *rule* would have applied to the *sub-fund* had it been a scheme recognised under section 264 of the *Act* immediately before *IP completion day* (unless the contrary intention appears).



- (9) In relation to persons with *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation*, the specified directions, rules and guidance in ■ FEES 4A, 7C and 13A apply to them. In addition, in relation to those persons, rules and guidance in *DISP*, *SUP*, *PRIN* and *BCOBS* apply to them as they apply to *electronic money institutions*, *payment institutions* and *registered account information service providers* that are authorised or registered in the UK.
- (10) A person with *temporary EMI authorisation* is deemed to be an *authorised electronic money institution* in accordance with regulation 2(a) of Part 1 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*. As such, the provisions of the *Electronic Money Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 7 of the *E-money and Payments Transitional Provisions Regulations* apply to such persons.
- (11) This paragraph applies to persons with *temporary PI authorisation* and *temporary RAISP authorisation*:
  - (a) a person with *temporary PI authorisation* is deemed to be an *authorised payment institution* in accordance with regulation 14(2)(a)(i) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.
  - (b) a person with *temporary RAISP authorisation* is deemed to be a *Registered Account Information Service Provider* in accordance with regulation 2(2)(a)(ii) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.
- (12) As such, the provisions of the *Payment Services Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 19 of the *E-money and Payments Transitional Provisions Regulations* apply to persons to whom paragraph (11) applies.
- (13) The Glossary definitions of *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation* each include both persons that enter the temporary permission regime set out in Parts 1 and 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations* and persons that enter the financial services contracts regime in accordance with regulation 12B and 26 of Parts 1A and 3 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.

### The effect of the General Rules

#### 2.2.37

G

- (1) The approach in these rules is a general one and does not apply where a rule states explicitly that a different provision applies to such a firm or that position is stated in relation to the rule.
- (2) The FCA has decided in certain cases specifically to apply rules to TP firms, for example:
  - (a) in relation to the application of our Principles for Businesses (PRIN);
  - (b) in chapters 4A, 6, 7C, 7D and 13A, and at rule 5.1.1CR, of the Fees Manual (FEES);

- (c) in the General Provisions (*GEN*) which relate to status disclosure;
  - (d) in the Client Assets sourcebook (*CASS*) at chapter 14;
  - (e) in the Compensation sourcebook (*COMP*);
  - (f) in chapters 1, 2 and 3 of the Dispute Resolution: Complaints sourcebook (*DISP*);
  - (g) in relation to the approved persons regime, such specific applications are largely to be found in the Supervision Manual (*SUP*) 10A; and
  - (h) in relation to the senior managers and certification regime, the main provisions so applied are listed in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) at ■ SYSC 23.3.3G.
- (3) The effect of ■ GEN 2.2.26R(1) and ■ GEN 2.2.32R also includes a *rule* which applied immediately before *IP completion day* to a *firm's* activity beyond the activity that was its permitted activity under Schedule 3 (or its permitted activity under Schedule 4 to the *Act* or beyond the activity that was permitted under paragraph 2(1) of Schedule 5 to the *Act*). For example, where such a *firm* had a *Part 4A permission* for that other activity before *IP completion day* (i.e. it had a top-up permission).
- (4) None of ■ GEN 2.2.26R(1), ■ GEN 2.2.26R(2) and ■ GEN 2.2.32R prevent changes being made to the *rules* that apply to such *firms* on and after *IP completion day*.
- (5) ■ GEN 2.2.26R(2) refers to a *rule* which deals with a matter which immediately before *IP completion day* was reserved to the *Home State* of the *firm*. These *rules* include both *rules* that under an *EU* directive are always the responsibility of that state, such as *rules* concerning the safeguarding of client assets, and also *rules* the responsibility for which depends on whether the service or activity takes place at a *branch* or establishment in a state other than the *Home State* of the *firm* or is provided cross border from a *branch* or establishment in the *Home State*. For example, it would cover all of the *rules* which implement the provisions which are the responsibility of the *Home State* under, as the case may be, article 34 or article 35 of *MIFID*. ■ GEN 2.2.26R(2)(b) and the words in (4) and (6) concerning the *EEA State* where the *TP firm* has its establishment will be applicable in a situation where an *EU* directive includes a country of origin provision (one which generally requires compliance with the law of the state where the establishment from which the service is provided), such as the *E-Commerce Directive* or the *Distance Marketing Directive*. In that case ■ GEN 2.2.26R(2)(b) and the related words in (4) and (6) would apply to an *FCA rule* which deals with a matter reserved, under such a directive, to the law of the state where the *TP firm* has its establishment from which the service is provided, an example of which is the *rules* in ■ COBS 5.2.
- (6) The effect of ■ GEN 2.2.26R(2) is to apply a *rule* to the extent that the *rule* implemented an *EU* directive, notwithstanding that before *IP completion day* the matter was reserved to the *Home State* or to the state where the establishment from which the service is provided is situated. A *rule* which the *FCA* imposes by virtue of a national discretion set out in a directive is to be taken as a *rule* which

implements a directive. Where a *TP firm's* home state or, where relevant, the country of origin of the *firm's* establishment exercises a national discretion expressly permitted by a directive not to apply a provision, which the *FCA* has chosen to apply through a *rule*, the *firm* has no need to comply with or apply the *rule* in question. To the extent a *rule* goes beyond what is necessary to implement a directive, it does not apply as a result of ■ GEN 2.2.26R(2). Therefore a more stringent *rule* applied by the *FCA* in relation to a minimum harmonisation EU directive would not be applied by ■ GEN 2.2.26R(2).

- (7) The General Rules set out in ■ GEN 2.2.26R to ■ 2.2.31G do not address EEA fund managers which only market funds in the *UK* without carrying on any *regulated activity* here (e.g. without managing any funds). The definition of *TP firm* does not include a *person* which was a recognised scheme under section 264 of the *Act* and a *person* which exercised its right only to market an *AIF* in the *UK* in accordance with Schedule 3 to the *Act*. *Persons* when only marketing are defined for these *rules* and *guidance* as *TP UCITS qualifiers* and *TP AIFM qualifiers*, and are covered by ■ GEN 2.2.32R, ■ 2.2.33R, ■ 2.2.34R and ■ 2.2.35R.
- (8) An example of a matter falling within ■ GEN 2.2.28R(1) or ■ GEN 2.2.34R(1) may be a *rule* which on *IP completion day* (as a result of an amendment made under the European Union (Withdrawal) Act 2018) then only refers to membership of a *UK* professional body. Where ■ GEN 2.2.28R(1) or ■ GEN 2.2.34R(1) applies, the *firm* may treat the *rule* in question as if it continued to refer to an EEA professional body.
- (9) In determining the *rules* that apply to them by virtue of ■ GEN 2.2.26R(1), *TP firms* may as a starting point find it helpful to refer to the table in ■ SUP 13A Annex 1 (Rules that apply to incoming EEA firms) as it applied immediately before *IP completion day*. However, the table will not apply in its entirety to each *TP firm*, for example, because a *TP firm* with top-up permission (see paragraph (3)) needs to continue to comply with *rules* that apply in relation to that activity, and specified *rules* referred to in the table were deleted on *IP completion day* and are not applied by the General Rules as set out in ■ GEN 2.2.27R(2)), namely those in *COMP* and ■ FEES 6.
- (10) In determining the *rules* that apply to them by virtue of ■ GEN 2.2.26R(2), *TP firms* may as a starting point find it helpful to refer to the table in ■ SUP 13A Annex 2G (Matters reserved to the home state) as it applied immediately before *IP completion day*.
- (11) ■ GEN 2.2.27R(3) concerns the use of the *FCA's* standstill direction to disapply or modify certain obligations as a result of the operation of exit instruments. That direction does not apply to *rules* applied to *TP firms* by the general approach *rules*. ■ GEN 2.2.27R(3) therefore achieves a similar result to the direction by disapplying the requirement in ■ GEN 2.2.27R(1)(a) to comply with changes made to a *rule* in question which comes into force on *IP completion day* to address an issue resulting from the *UK's* withdrawal from the *European Union*. Since ■ GEN 2.2.27R(3) states that, where it applies, a *TP firm* does not have to comply with a *rule* as amended referred to in ■ GEN 2.2.27R(1)(a), it is open to the *TP firm* to comply with such a *rule* while the *FCA's* standstill direction is in force. ■ GEN 2.2.33R(3) has the same effect in relation to *TP UCITS qualifiers* and *TP AIFM*

*qualifiers*. In contrast, ■ GEN 2.2.27R(4), where it applies, has the effect that a *TP firm* has to comply with a prudential rule which applies to it as the rule was immediately before *IP completion day*.

### Rules and guidance applying while a firm has temporary permission – tied agents

2.2.38

G

- (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the *Financial Services Register* (see section 39(1A) of the Act).
- (2) To ensure that a *tied agent* is included on the *Financial Services Register*, a *TP firm* should complete the Appointed representative appointment form in ■ SUP 12 Annex 3R when appointing a *tied agent* to carry on *MiFID* business on its behalf in the *United Kingdom*.
- (3) A *TP firm* that terminates its relationship with a *tied agent* that was required to be notified to the *FCA* should complete the Appointed representative termination form in ■ SUP 12 Annex 5R to have that *tied agent* removed from the *Financial Services Register*.

### TP firms that enter the financial services contracts regime under Part 6 of the EU Exit Passport Regulations

2.2.39

G

- (1) As the definitions of *TP firm* and *temporary permission* also include *TP firms* under Part 6 of the *EU Exit Passport Regulations*, the rules and guidance in ■ GEN 2.2.26R to ■ GEN 2.2.35G also apply to firms which enter the financial services contracts regime set out in Part 6 of those *Regulations* after *IP completion day* having been in *temporary permission* under Part 3 of those *Regulations*, or which become *TP firms* under regulation 32 of those *Regulations*.
- (2) The application of rules and guidance to *TP firms* under Part 6 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 6 of those *Regulations*, which is to enable such a *TP firm* to run down its regulated business in the *United Kingdom*. Regulation 33 or 40 of the *EU Exit Passport Regulations* sets out the scope of permitted activities, which is generally those *regulated activities* previously within the scope of the firm's passport, necessary to perform a pre-existing contract (as defined in regulation 46 of the *EU Exit Passport Regulations*).
- (3) Accordingly, the rules and guidance in ■ GEN 2.2.26R to ■ 2.2.31G, and ■ 2.2.35R to ■ 2.2.37G continue to apply where a *TP firm* leaves *temporary permission* under Part 3 of the *EU Exit Passport Regulations* and then enters *temporary permission* under Part 6 of the *EU Exit Passport Regulations*, namely, where the person falls within regulation 31, 37 or 38 of the *EU Exit Passport Regulations*. The same is true for a *TP firm* which leaves *temporary permission* under regulation 28 of the *EU Exit Passport Regulations* and then enters *temporary permission* under regulation 39 of those *Regulations*.
- (4) In those cases, ■ GEN 2.2.27R has the effect that any changes referred to in that rule, which happen between *IP completion day* and when the person enters *temporary permission* (notwithstanding that they were previously in *temporary permission*) under the regulation in

question, apply to the *TP firm*. This also applies to a *TP firm* which enters *temporary permission* for the first time under regulation 32 of the *EU Exit Passport Regulations*.

- (5) Where a *TP firm* enters *temporary permission* under regulation 32 of the *EU Exit Passport Regulations*, a rule referred to in ■ GEN 2.2.26R(1) once again applies to that *person*, together with any changes referred to in paragraph (3). The *rules* applied by ■ GEN 2.2.26R(2) to such a *TP firm* apply together with any changes referred to in paragraph (3).