

**PRA RULEBOOK: NON-CRR FIRMS: INTERNAL GOVERNANCE OF THIRD COUNTRY
BRANCHES INSTRUMENT 2016**

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 137G (The PRA’s general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Non-CRR Firms: Internal Governance of Third Country Branches Instrument
2016**

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on 7 March 2016.

Citation

- F. This instrument may be cited as the PRA Rulebook: Non-CRR Firms: Internal Governance of Third Country Branches Instrument 2016.

By order of the Board of the Prudential Regulation Authority

24 February 2016

Annex

In this Annex, the text is all new and is not underlined.

Part

INTERNAL GOVERNANCE OF THIRD COUNTRY BRANCHES

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1 APPLICATION AND DEFINITIONS

- 1.1 Unless otherwise stated, this Part applies to a *third country CRR firm*;
- (1) with respect to the carrying on of the following from an establishment in the *UK*:
 - (a) *regulated activities* except *auction regulation bidding*;
 - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
 - (c) *ancillary activities*;
 - (d) in relation to *MiFID business*, providing *ancillary services*; and
 - (e) *unregulated activities* in a *prudential context*; and
 - (2) in a *prudential context* with respect to activities wherever they are carried on; and
 - (3) taking into account any activity of other members of a *group* of which the *firm* is a member.
- 1.2 A reference to a *firm* in this Part is to a *firm* within the scope of 1.1.
- 1.3 In this Part, the following definitions shall apply:

auction platform

means a platform on which auctions of *allowances* are held in accordance with the *auction regulation*.

auction regulation

Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.

auction regulation bidding

means the *regulated activity* of *bidding in emissions auctions* where it is carried on by:

- (a) a *firm* that is exempt from *MiFID* under article 2(1)(i); or
- (b) a *MiFID investment firm* (other than a *UCITS investment firm*) on behalf of its *clients* in relation to a *two-day emissions spot*.

authorisation

means authorisation as an *authorised person* for the purposes of *FSMA*.

two-day emissions spot

means an *allowance* where delivery is to be made at an agreed date no later than the second trading day from the day of an auction on an *auction platform* (within the meaning of article 3(3) of the *auction regulation*).

UCITS investment firm

means a *firm* which:

- (a) is a *management company* (whether or not it is also the operator of other *collective investment schemes*); and
- (b) has a *Part 4A permission* (or an equivalent permission from its Home State regulator) to manage *investments* where:
 - (i) the *investments* managed include one or more of the instruments listed in Section C of Annex 1 to *MiFID*; and
 - (ii) the *permission* extends to activities permitted by article 6(3) of the *UCITS Directive* as well as those permitted by article 6(2).

2 GENERAL ORGANISATIONAL REQUIREMENTS

- 2.1 A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.
- 2.2 A *firm* must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services and activities undertaken in the course of that business establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *firm*.

3 PERSONS WHO EFFECTIVELY DIRECT THE BUSINESS

- 3.1 The *senior personnel* of a *firm* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.
- 3.2 A *firm* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in 3.1.

3.3 If the *firm* is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

it must have alternative arrangements in place which ensure sound and prudent management of the *firm*.

4 RESPONSIBILITY OF SENIOR PERSONNEL

4.1 A *firm*, when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.

5 SKILLS, KNOWLEDGE AND EXPERTISE

5.1 A *firm* must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them, taking into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

6 COMPLIANCE

6.1 This chapter applies to the carrying on of an *auction regulation bidding*, to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the *firm* (including its managers, employees and *appointed representatives*) might be used to further *financial crime*.

6.2 A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, *employees* and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

6.3 In order to ensure compliance in accordance with 6.2, a *firm* that carries on *designated investment business* with or for *retail clients* or *professional clients* must appoint a compliance officer who is responsible for compliance.

7 OUTSOURCING

- 7.1 If a *firm* outsources critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:
- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
 - (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
 - (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;
 - (4) none of the other conditions subject to which the *firm's authorisation* was granted must be removed or modified.

8 RECORD KEEPING

- 8.1 This chapter applies to activities carried on by a *firm* from an establishment maintained in the *UK*, unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case this chapter applies with that wider scope in relation to the activity described in that rule.
- 8.2 A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *PRA* or any other relevant competent authority under *MiFID* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

Part

INTERNAL GOVERNANCE OF THIRD COUNTRY BRANCHES

Externally defined glossary terms:

Term	Definition source
<i>allowance</i>	<i>Article 3(a) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council directive 96/61/EC</i>
<i>authorised person</i>	<i>s31(2) FSMA</i>
<i>bidding in emissions auctions</i>	<i>article 24A RAO</i>
<i>collective investment scheme</i>	<i>s235(1) FSMA</i>
<i>EEA firm</i>	<i>paragraph 5, part I, schedule 3 FSMA</i>
<i>financial crime</i>	<i>s1H FSMA</i>
<i>investment</i>	<i>s22(4) FSMA s93(2) Financial Services Act 2012</i>
<i>management company</i>	<i>article 2(1)(b) UCITS Directive</i>