

**PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: GROUP FINANCIAL  
SUPPORT INSTRUMENT 2015**

**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);
  - (2) section 137T (general supplementary powers);
  - (3) section 192J (rules requiring provision of information by parent undertakings); and
  - (4) section 192JB (rules requiring parent undertakings to facilitate resolution).
- B. The PRA exercises the following powers in the Act to make those terms in the Glossary that are used in this instrument in rules applicable to qualifying parent undertakings:
- (1) section 192J (rules requiring provision of information by parent undertakings);
  - (2) section 192JB (rules requiring parent undertakings to facilitate resolution); and
  - (3) section 137T (general supplementary powers).
- C. 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**

- D. 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: CRR Firms and Non-Authorised Persons: Group Financial Support Instrument 2015**

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

**Commencement**

- F. This instrument comes into force on 19 January 2015.

**Citation**

- G. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Group Financial Support Instrument 2015.

**By order of the Board of the Prudential Regulation Authority**

15 January 2015

## Annex A

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

Part

# GROUP FINANCIAL SUPPORT

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## 1 APPLICATION AND DEFINITIONS

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- 1.1 Unless otherwise stated, this Part applies to a *BRRD undertaking* which is a *CRR firm*, a *financial holding company*, a *mixed financial holding company* or a *mixed activity holding company*.
- 1.2 This Part does not apply in relation to:
- (1) financial arrangements, other than *group financial support agreements*, including funding arrangements and the operation of centralised funding arrangements, provided that no *institution* that is party to such arrangements meets the *conditions for early intervention*; and
  - (2) financial support provided by a *BRRD undertaking* to a member of its *group* that experiences financial difficulties if the *BRRD undertaking* decides to do so on a case-by-case basis and according to *group* policies if it does not represent a risk for the *group*.

### [Note: Art. 19(2) and (3) of the *BRRD*]

- 1.3 In this Part, the following definitions shall apply:

#### *competent authority*

means a public authority or body officially recognised by national law which is empowered by national law to supervise *institutions* as part of the supervisory system in operation in the *EEA State* concerned or the European Central Bank with regard to the specific tasks conferred on it by Article 4 of Council Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of *credit institutions*.

#### *conditions for early intervention*

means circumstances in which an *institution* infringes or is likely in the near future to infringe the requirements of the *CRR*, the *CRD*, *MiFID II* or any of Articles 3 - 7, 14 - 17 and 24, - 26 of *MiFIR*.

#### *EEA consolidating supervisor*

means a *competent authority* responsible under the *CRD* for the exercise of supervision on a *consolidated basis* of:

- (1) an *EEA parent institution*; or
- (2) *institutions controlled* by an *EEA parent financial holding company* or an *EEA parent mixed financial holding company*.

#### *EEA parent financial holding company*

means a *parent financial holding company* in an *EEA State* which is not a *subsidiary* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

#### *EEA parent institution*

means a *parent institution in an EEA State* which is not a *subsidiary* of another *institution* authorised in an *EEA State* or of a *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

*EEA parent mixed financial holding company*

means a *parent mixed financial holding company in an EEA State* which is not a *subsidiary* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

*EEA parent undertaking*

means an *EEA parent institution*, an *EEA parent financial holding company* or an *EEA parent mixed financial holding company*.

*group*

means a *parent undertaking* and its *subsidiaries*.

*group financial support agreement*

means an agreement between:

- (1) a *parent institution in an EEA State*, an *EEA parent institution* or a *qualifying parent undertaking*, a *financial holding company*, *mixed financial holding company* or *mixed-activity holding company* established in an *EEA State*; and
- (2) a *subsidiary* of an entity referred to in (1) set up in a different *EEA State* to that of the entity referred to in (1) or in a *third country* and that is an *institution* or a *financial institution* covered by the consolidated supervision of the entity referred to in (1),

to provide financial support to a party that is an *institution* at a time when that *institution* meets the *conditions for early intervention*.

*management body*

means a *BRRD undertaking's* body or bodies, which are appointed in accordance with national law, which are empowered to set the *BRRD undertaking's* strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the *persons* who effectively direct the business of the *BRRD undertaking*.

*own funds requirement*

means the requirements laid down in Articles 92 - 98 of the *CRR*.

*parent institution in an EEA State*

means an *institution* authorised in an *EEA State* which has an *institution* or *financial institution* as *subsidiary* or which holds a *participation* in such an *institution* or *financial institution*, and which is not itself a *subsidiary* of another *institution* authorised in the same *EEA State* or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

*parent financial holding company in an EEA State*

means a *financial holding company* which is not itself a *subsidiary* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

*parent mixed financial holding company in an EEA State*

means a *mixed financial holding company* which is not itself a *subsidiary* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

- 1.4 Unless otherwise defined, any italicised expression used in this Part and in the *CRR* has the same meaning as in the *CRR*.

## 2 GROUP FINANCIAL SUPPORT AGREEMENT

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- 2.1 A *BRRD undertaking* must not enter into a *group financial support agreement* unless the following conditions are satisfied:

- (1) the *group financial support agreement* specifies the principles for the calculation of the consideration for any transaction made under it, which:
  - (a) need not take into account any anticipated temporary impact on market prices arising from events external to the *group*;
  - (b) may take into account information unavailable to the market in the possession of the party providing financial support based on it being in the same *group* as the party receiving financial support; and
  - (c) must require that the consideration is set at the time of the provision of financial support;
- (2) each party acts freely in entering into the *group financial support agreement*;
- (3) in entering into the *group financial support agreement* and in determining the consideration for the provision of financial support, each party acts in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of the provision of the financial support;
- (4) each party providing financial support has full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;

**[Note: Art. 19(7) of the *BRRD*]**

- (5) any right, claim or action arising from the *group financial support agreement* may be exercised only by the parties to the agreement; and

**[Note: Art. 19(9) of the *BRRD*]**

- (6) the terms of the *group financial support agreement* are consistent with the conditions for the provision of financial support in 4.1.

**[Note: Art. 20(3) of the *BRRD*]**

- 2.2 A *BRRD undertaking* must not enter into a proposed *group financial support agreement* if:
- (1) the *EEA consolidating supervisor* has not granted permission to do so; or
  - (2) at the time the proposed agreement is made, a *competent authority* has decided that a party to the agreement that is an *institution* meets the *conditions for early intervention*.

**[Note: Art. 19(8) and Art. 20(3) of the BRRD]**

### 3 SUBMISSION OF GROUP FINANCIAL SUPPORT AGREEMENT

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- 3.1 This Chapter applies to a *BRRD undertaking* which is an *EEA parent undertaking*, unless the *FCA* is the *EEA consolidating supervisor* of its *group*.
- 3.2 If a *BRRD undertaking* or any member of its *group* intends to enter into a *group financial support agreement*, or amend a *group financial support agreement* previously authorised by an *EEA consolidating supervisor*, the *BRRD undertaking* must submit to the *EEA consolidating supervisor* an application for authorisation of the proposed agreement or amendment.
- 3.3 The application referred to in 3.2 must contain the text of the proposed *group financial support agreement* and identify any other *persons* in the same *group* as the *BRRD undertaking* that propose to be parties to the proposed agreement.

**[Note: Art. 20(1) of the BRRD]**

### 4 CONDITIONS FOR GROUP FINANCIAL SUPPORT

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- 4.1 A *BRRD undertaking* must not provide financial support in accordance with a *group financial support agreement* unless the following conditions are met:
- (1) there is a reasonable prospect that the financial support provided significantly redresses the financial difficulties of the *group* member receiving the support;
  - (2) the provision of financial support has the objective of preserving or restoring the financial stability of the *group* as a whole or any of the members of the *group* and is in the interests of the *BRRD undertaking* providing the support;
  - (3) the financial support is provided on terms, including consideration, in accordance with 2;
  - (4) there is a reasonable prospect, on the basis of the information available to the *management body* of the *BRRD undertaking* providing financial support at the time when the decision to grant financial support is taken, that the consideration for the financial support will be paid and, in particular:
    - (a) if the financial support is given in the form of a loan, the loan will be repaid by the *group* entity receiving the support; and
    - (b) if the financial support is given in the form of a guarantee or any form of security, the liability of the *group* entity receiving the support that arises in the

event that the guarantee is called upon or the security is enforced, will be paid.

- (5) the provision of the financial support would not jeopardise the liquidity or solvency of the *BRRD undertaking* providing the financial support;
- (6) the provision of the financial support would not create a threat to financial stability, in particular in the *UK*;
- (7) where a *firm* provides the financial support, it complies at the time the financial support is provided, with the requirements of the *CRD* relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of the *CRD* and the provision of the financial support does not cause the *firm* to infringe those requirements;
- (8) where a *firm* provides the financial support, it complies at the time when the financial support is provided, with the requirements relating to large exposures laid down in the *CRR* and in the Large Exposures Part, and the provision of the financial support must not cause the *firm* to infringe those requirements; and
- (9) the provision of the financial support would not undermine the resolvability of the *BRRD undertaking* providing the financial support.

**[Note: Art. 23 of the *BRRD*]**

## **5 DECISION TO PROVIDE OR ACCEPT GROUP FINANCIAL SUPPORT**

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- 5.1 A *BRRD undertaking* that intends to provide financial support in accordance with a *group financial support agreement* must ensure that the decision to provide financial support is taken by its *management body*.
- 5.2 The decision must be reasoned and indicate the objective of the proposed financial support; in particular, the decision must indicate how the provision of the financial support complies with the conditions in 4.1.
- 5.3 A *firm* that intends to accept financial support in accordance with a *group financial support agreement* must ensure that the decision to accept financial support is taken by its *management body*.

**[Note: Art. 24 of the *BRRD*]**

## **6 NOTIFICATION OF PROPOSED GROUP FINANCIAL SUPPORT**

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- 6.1 A *BRRD undertaking* that intends to provide financial support in accordance with a *group financial support agreement* must ensure that its *management body* notifies:
  - (1) the *PRA*;
  - (2) where different from the authorities in (1) and (3), where applicable, the *EEA consolidating supervisor*;

(3) where different from the authorities in (1) and (2), the *competent authority* of the *group* member receiving the financial support; and

(4) the *EBA*,

before it provides that financial support.

6.2 The notification must include the reasoned decision of the *management body* and details of the proposed financial support including a copy of the *group financial support agreement*.

**[Note: Art. 25(1) of the *BRRD*]**

## 7 PROVISION AND NOTIFICATION OF GROUP FINANCIAL SUPPORT

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7.1 A *BRRD undertaking* may only provide financial support in accordance with a *group financial support agreement* if:

(1) the *PRA* has not, within five *business days* from the date of receipt by the *PRA* of the complete notification in 6.1, prohibited the provision of the financial support;

(2) the *PRA* has agreed to the provision of the proposed financial support; or

(3) the *PRA* has agreed to the provision of financial support subject to restrictions.

7.2 Where the *PRA* has agreed to the provision of financial support subject to restrictions, a *BRRD undertaking* may only provide financial support in accordance with those restrictions.

**[Note: Art. 25(5) of the *BRRD*]**

7.3 Where the *management body* of a *BRRD undertaking* decides to provide the financial support, that *BRRD undertaking* must notify:

(1) the *PRA*;

(2) where different from the authorities in (1) and (3), where applicable, the *EEA consolidating supervisor*;

(3) where different from (1) and (2), the *competent authority* of the *group* member receiving the financial support; and

(4) the *EBA*.

**[Note: Art. 25(6) of the *BRRD*]**

## 8 DISCLOSURE

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8.1 A *BRRD undertaking* must, in accordance with the general principles set out in Articles 431 - 434 of the *CRR*, disclose:

(1) whether or not it has entered into a *group financial support agreement*;

(2) a description of the general terms of any such agreement; and



(3) the names of the *group* members that are party to the agreement.

8.2 A *BRRD undertaking* must update the information disclosed at least annually.

**[Note: Art. 26(1) of the *BRRD*]**