

# **FINANCIAL SERVICES AND MARKETS ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Schedule 6: Threshold Conditions***

##### **Part I: Part IV Permission**

800. This Part sets out the minimum conditions against which an applicant for permission under section 40 must be measured. Failure to meet one of the conditions is sufficient grounds for refusal to grant permission or for granting permission for a narrower range or definition of regulated activities than sought by the applicant. However, the fact that an applicant satisfies all the applicable conditions in this Schedule does not confer any automatic right to permission. The Authority retains some discretion to refuse an application even where all these conditions are satisfied.
801. The conditions must also be met on an on-going basis by authorised persons and failure to meet one of the conditions is sufficient grounds for the exercise by the Authority of its power to vary an authorised person's permission under section 45, and through that power, its power to withdraw an authorised person's authorisation under section 33. However, the Authority may, from time to time, temporarily subordinate the need to ensure that the threshold conditions are met on a continuous basis in line with its statutory objective of protecting consumers.

##### ***Paragraph 1: Legal Status***

802. This paragraph sets out certain conditions for legal form. Section 40 allows for authorised persons to be natural persons as well as companies, partnerships or other unincorporated associations. However, not all these forms are acceptable under EC law for authorised persons carrying on certain types of business.
803. Thus the effecting and carrying out of contracts of insurance is limited to bodies corporate, registered friendly societies or members of Lloyd's insurance market, and only bodies corporate or partnerships may accept deposits.

##### ***Paragraph 2: Location of offices***

804. This paragraph implements the requirement under the Post-BCCI Directive (Council Directive 95/26/EEC of 29 June 1995) that persons covered by the single market directive should have their head office in the country in which they have their registered office. It requires authorised persons who are bodies corporate constituted under the law of any part of the United Kingdom, to have their head office (that is, the main centre from which the firm is run) in the United Kingdom. If they have a registered office, as most bodies corporate do, it must also be in the United Kingdom. If the person does not have a registered office (for instance if he is an individual or an unincorporated association) but his head office is in the United Kingdom, he must carry on authorisable

business in the United Kingdom. This requirement is aimed at ensuring that authorised persons organise their business in a way that can be effectively supervised. A problem in the case of the failure of BCCI was that it was incorporated in one State, Luxembourg, but had its head office in another, the United Kingdom.

### ***Paragraph 3: Close links***

805. This paragraph requires the Authority to be satisfied that it can supervise an applicant or authorised person effectively, taking into account the structure of the group to which they belong, or the other firms to which they have relevant links, and the laws, regulations or administrative provisions of any non-EEA country to which they may be subject.
806. “Close links” is defined in *sub-paragraph (2)* and this sets out the structures that are relevant for these purposes. These cover the authorised person (or applicant), any parent undertaking or subsidiary undertaking of theirs and certain undertakings connected to such parent or subsidiary. In addition, the holding or control of 20 per cent of voting power by the authorised person (or applicant) in another body, or such a holding or control of voting power in the authorised person (or applicant), will constitute a close link for these purposes. These structures cover natural persons, and other forms of associations; and in such cases the relevant links are to be understood as referring to degrees of control that are equivalent.

### ***Paragraph 4: Adequate resources***

807. This paragraph requires the Authority to be satisfied that the applicant has adequate resources, which has a wide meaning. The term adequate is intended to mean sufficient in terms of quantity, quality and availability, and resources is intended to include all material or financial resources, for instance capital, provisions against liabilities, holdings of or access to cash and other liquid assets. A person must also have effective means by which to manage risks. The Authority may take account of a person’s membership of a group in deciding whether it is satisfied that this condition is met.

### ***Paragraph 5: Suitability***

808. This paragraph requires the Authority to be satisfied that the person is “fit and proper” to be permitted to carry on the relevant activities, taking account of connections with other persons, the range and nature of regulated activities he carries on (or proposes to carry on), and the overall need to be satisfied that his affairs are and will be soundly and prudently managed.