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STATUTORY INSTRUMENTS

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**2001 No. 2511**

The Financial Services and Markets Act 2000  
(EEA Passport Rights) Regulations 2001

PART II

Exercise of Passport Rights by EEA Firms

*Contents of consent notice and regulator's notice*

**Establishment of a branch: contents of consent notice**

2.—(1) The following information is prescribed for the purposes of paragraph 13(1)(b)(iii) of Schedule 3 (and is therefore to be included in a consent notice given to the Authority by a firm's home state regulator pursuant to paragraph 13(1)(a) of Schedule 3).

- (2) In the case of an investment firm, the prescribed information is—
- (a) a statement that the firm is an investment firm;
  - (b) the requisite details of the branch; and
  - (c) details of any compensation scheme which is intended to protect the branch's investors.
- (3) In the case of a credit institution, the prescribed information is—
- (a) a statement that the firm is a credit institution;
  - (b) the requisite details of the branch;
  - (c) the amount of the firm's own funds (as defined in Section 1 of Chapter 2 of Title V to the banking consolidation directive); and
  - (d) the solvency ratio of the firm (calculated in accordance with the banking consolidation directive).
- (4) In the case of a financial institution, the prescribed information is—
- (a) a statement that—
    - (i) the firm is a financial institution;
    - (ii) the firm is a subsidiary undertaking of a credit institution which is authorised in the EEA State in question and which holds at least 90 per cent of the voting rights in the firm (and for the purpose of this paragraph any two or more credit institutions which are authorised in that EEA State and hold voting rights in the firm are to be treated as a single credit institution, and as being "parent undertakings" of the firm);
    - (iii) the firm carries on in that EEA State the EEA activities in question;
    - (iv) the memorandum and articles of association, or other constituent instrument, of the firm permit it to carry on those activities;
    - (v) the consolidated supervision of the firm's parent undertaking or, if more than one, any one of them effectively includes supervision of the firm;

- (vi) the firm's parent undertaking has guaranteed or, if more than one, they have jointly and severally guaranteed, the firm's obligations, with the consent of the home state regulator;
  - (vii) the firm's business is being conducted in a prudent manner;
  - (b) the requisite details of the branch;
  - (c) the amount of the firm's own funds (as defined in Section 1 of Chapter 2 of Title V to the banking consolidation directive); and
  - (d) the solvency ratio of the firm's parent undertaking (calculated in accordance with the banking consolidation directive).
- (5) In the case of an insurance firm, the prescribed information is—
- (a) a scheme of operations prepared in accordance with such requirements as may be imposed by the firm's home state regulator, setting out (amongst other things) the types of business to be carried on and the structural organisation of the branch;
  - (b) the name of the firm's authorised agent;
  - (c) the address in the United Kingdom from which information about the business may be obtained, and a statement that this is the address for service on the firm's authorised agent;
  - (d) in the case of a firm which intends to cover relevant motor vehicle risks, a declaration by the firm that it has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929(1) on the 14th June 1946); and
  - (e) a statement by the firm's home state regulator attesting that the firm has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
    - (i) Articles 16 and 17 of the first non-life insurance directive, and
    - (ii) Articles 18, 19 and 20 of the first life insurance directive.

### **Provision of services: contents of regulator's notice**

**3.—(1)** The following information is prescribed for the purposes of paragraph 14(1)(b) of Schedule 3 (and is therefore to be included in a regulator's notice given to the Authority by a firm's home state regulator pursuant to that paragraph).

- (2) In the case of an investment firm, the prescribed information is—
- (a) a statement that the firm is an investment firm; and
  - (b) particulars of the programme of operations to be carried on in the United Kingdom, including a description of the particular EEA activities to be carried on.
- (3) In the case of an insurance firm, the prescribed information is—
- (a) a statement of the classes of business which the firm is authorised to carry on in accordance with Article 6 of the first non-life insurance directive or Article 6 of the first life insurance directive;
  - (b) the name and address of the firm;
  - (c) the nature of the risks or commitments which the firm proposes to cover in the United Kingdom;
  - (d) in the case of a firm which intends to cover relevant motor vehicle risks—
    - (i) the name and address of the claims representative; and

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(1) 1929 c. 23. Repealed by the Companies Act 1948 (c. 38).

- (ii) a declaration by the firm that it has become a member of the Motor Insurers' Bureau; and
- (e) a statement by the firm's home state regulator attesting that the firm has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
  - (i) Articles 16 and 17 of the first non-life insurance directive, and
  - (ii) Articles 18, 19 and 20 of the first life insurance directive.

#### *Changes relating to EEA firms*

#### **Investment firms, credit institutions and financial institutions: changes to branch details**

4.—(1) An investment firm, credit institution or financial institution which has established a branch in the United Kingdom in exercise of an EEA right must not make a change in the requisite details of the branch, unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change;
- (b) the Authority has received from the home state regulator a notice stating those details; and
- (c) either the Authority has informed the firm that it may make the change, or the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in sub-paragraph (a) has elapsed.

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to its home state regulator, stating the details of the change.

(6) The Authority must, as soon as practicable after receiving a notice from an investment firm, credit institution or financial institution under this regulation, inform the firm of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

#### **Investment firms: changes to services**

5.—(1) An investment firm which is providing services in the United Kingdom in exercise of an EEA right must not make a change in any of the matters referred to in regulation 3(2)(b), unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change; or
- (b) if the change is occasioned by circumstances beyond the firm's control, it has as soon as practicable (whether before or after the change) given to the Authority and to its home state regulator a notice stating the details of the change.

(4) The Authority must, as soon as practicable after receiving a notice from an investment firm under this regulation, inform the firm of any consequential changes in the applicable provisions (within the meaning of paragraph 14 of Schedule 3).

#### **Insurance firms: changes to branch details**

6.—(1) An insurance firm which has established a branch in the United Kingdom in exercise of an EEA right must not make a change in any of the details referred to in regulation 2(5)(a) to (c) with respect to the branch, unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the relevant requirements are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change;
- (b) the Authority has received from the home state regulator a notice stating that it has approved the proposed change;
- (c) the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in sub-paragraph (a) has elapsed; and
- (d) either—
  - (i) a further period of one month has elapsed; or
  - (ii) the Authority has informed the home state regulator of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to its home state regulator, stating the details of the change.

(6) The Authority must, as soon as practicable—

- (a) acknowledge receipt of the documents sent under paragraph (4) or (5); and
- (b) in the case of a notice under paragraph (5), inform the firm's home state regulator of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

#### **Insurance firms: changes to services**

7.—(1) An insurance firm which is providing services in the United Kingdom in exercise of an EEA right must not make a change in any of the matters referred to in regulation 3(3)(b), (c) or (d), unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to its home state regulator stating the details of the proposed change; and
- (b) the home state regulator has passed to the Authority the information contained in that notice.

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given to its home state regulator a notice stating the details of the change.

#### *Cancellation of qualification for authorisation*

#### **EEA firms ceasing to carry on regulated activities in the United Kingdom**

8. Where an EEA firm which is qualified for authorisation under Schedule 3—
- (a) has ceased, or is to cease to carry on regulated activities in the United Kingdom, and
  - (b) gives notice of that fact to the Authority,

the notice is to be treated as a request for cancellation of the firm's qualification for authorisation under Schedule 3 (and hence as a request under section 34(2) of the Act).

#### **Financial institutions giving up right to authorisation**

9.—(1) The Authority may, on an application by a financial institution which is qualified for authorisation under Schedule 3, direct that the firm's qualification for authorisation under Schedule 3 is cancelled from such date as may be specified in the direction.

- (2) The Authority must not give such a direction unless—
- (a) the firm has given notice to its home state regulator; and
  - (b) the Authority has agreed with the home state regulator that the direction should be given.
- (3) The date specified in such a direction—
- (a) must not be earlier than the date requested in the application; but
  - (b) subject to that, is to be such date as may be agreed between the Authority and the firm's home state regulator.

(4) The Authority must, as soon as practicable, send a copy of the direction to the firm and to the firm's home state regulator.

(5) A firm in respect of which such a direction has been given may (notwithstanding subsection (3) of section 40 of the Act) apply for permission under that section, to take effect not earlier than the date referred to in paragraph (1).

#### *Applications for approval under section 60 by EEA firms*

#### **Applications for approval under section 60 by EEA firms**

10. In section 60 of the Act (applications for approval for persons to perform controlled functions), "the authorised person concerned" includes an EEA firm with respect to which the Authority has received a consent notice under paragraph 13 of Schedule 3 or a regulator's notice under paragraph 14 of that Schedule, and which will be the authorised person concerned if it qualifies for authorisation under that Schedule.