

**CAPITAL REQUIREMENTS DIRECTIVE (PASSPORTING) AMENDMENT  
INSTRUMENT 2013**

**Powers exercised**

- A. The Prudential Regulation Authority 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); and
  - (3) paragraphs 19(10) and 20(4C) of Schedule 3 (Exercise of passport rights by UK firms).
- 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 with the Financial Conduct Authority) (“FCA”), the PRA consulted the FCA. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**Commencement**

- D. Part 1 of the Annex to this instrument comes into force on 1 January 2014.
- E. Part 2 of the Annex to this instrument shall come into force on a date specified by a subsequent PRA Board Instrument.

**Amendments**

- F. The Supervisory manual (SUP) is amended in accordance with the Annex to this instrument.

**Notes and Guidance**

- G. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.
- H. The Prudential Regulation Authority gives as guidance each provision in the Annex that is marked with a G.

**Citation**

- I. This instrument may be cited as the Capital Requirements Directive (Passporting) Amendment Instrument 2013.

**By order of the Board of the Prudential Regulation Authority**  
16 December 2013

## Annex

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

**Part 1: Comes into force on 1 January 2014.**

## 13.2 Introduction

13.2.1 G This chapter gives *guidance* to *UK firms*. In most cases *UK firms* will be *authorised persons* under the *Act*. However, under the ~~*Banking Consolidation Directive*~~ *CRD*, a subsidiary of a *firm* which is a *credit institution* which meets the criteria set out in that Directive also has an *EEA right*. Such an unauthorised subsidiary is known as a *financial institution*. References in this chapter to a *UK firm* include a *financial institution*.

...

## 13.3 Establishing a branch in another EEA State

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13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19 of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

- (1) the *UK firm* has given the *appropriate UK regulator*, in accordance with the *appropriate UK regulator's rules* (see SUP 13.5.1R) or the directly applicable regulations made under the CRD (see SUP 13.5.1C), notice of its intention to establish a *branch* (known as a *notice of intention*) which:
  - (a) identifies the activities which it seeks to carry on through the *branch*; and
  - (b) includes such other information as may be specified by the *appropriate UK regulator* (see SUP 13.5.1R) or by the directly applicable regulations made under the CRD (see SUP 13.5.1C);
- (2) the *appropriate UK regulator* has given a notice (known as a *consent notice*) to the *Host State regulator*,

...

- 13.3.5 G (1) If the *UK firm's EEA right* derives from the ~~*Banking Consolidation Directive*~~ CRD or *MiFID*, the *appropriate UK regulator* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.

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#### 13.4 Providing cross border services into another EEA State

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- 13.4.4 G (1) If the *UK firm's EEA right* derives from *MiFID*, the ~~*Banking Consolidation Directive*~~ CRD or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the Act requires the *appropriate UK regulator* to send a copy of the *notice of intention* to the *Host State Regulator* within *one month* of receipt. A *UK firm* passporting under the ~~*Banking Consolidation Directive*~~ CRD may start providing *cross border services* as soon as it satisfies the relevant conditions (see *SUP* 13.4.2G).

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#### 13.5 Notices of intention

- 13.5.1 R A *UK firm*, other than a *UK pure reinsurer* or a *CRD credit institution*, wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right* other than under the *auction regulation* must submit a *notice of intention* in the form set out in *SUP* 13 Annex 1R.

...

- 13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* other than under the *auction regulation* must submit a notice in the form set out in:

...

- ... ...  
 (2) ~~*Sup*~~ *SUP* 13 Annex 4R if the *UK firm* is passporting under the ~~*Banking Consolidation Directive*~~ CRD; or

...

- 13.5.6 G (1) A *UK firm* passporting under the ~~*Banking Consolidation Directive*~~ CRD, the *Insurance Directives* or the *Reinsurance Directive* may have to submit the *requisite details* or relevant details in the language of the *Host State* as well as in English.

For a *UK firm* passporting under the *Insurance Directives* this translated document will not include the relevant UK details. Further information is available from the *PRA* authorisations team.

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## 13.6 Changes to branches

- 13.6.1 G Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see *SUP* 13.6.9AG ) or the *Reinsurance Directive* (see *SUP* 13.6.9BR) or the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. ...

...

Firms passporting under the ~~Banking Consolidation Directive~~ *CRD* and the *UCITS Directive*.

- 13.6.4 G If a *UK firm* has exercised an *EEA right*, under the ~~*Banking Consolidation Directive*~~ *CRD* or the *UCITS Directive*, and established a *branch* in another *EEA State*, regulation 11(1) states that the *UK firm* must not make a change in the *requisite details* of the *branch* (see *SUP* 13 Annex 1), unless it has satisfied the requirements of regulation 11(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 11(3) (see *SUP* 13.6.10G).

...

- 13.6.13 G If a *UK firm* is passporting under the ~~*Banking Consolidation Directive*~~ *CRD*, then regulation 11(7) provides that the *PRA* may not refuse to consent to a change unless, having regard to the change and to the *EEA* activities the *UK firm* is seeking to carry on, it doubts the adequacy of the administrative structure or the financial situation of the *UK firm*. In reaching its determination, the *PRA* may have regard to the adequacy of management, systems and the presence of relevant skills needed for the *EEA* activities to be carried on.

...

Firms passporting under the ~~Banking Consolidation Directive~~ *CRD* and *Insurance Mediation Directive*

- 13.7.11 G A *UK firm* providing *cross border services* under the ~~*Banking Consolidative Directive*~~ *CRD* or *Insurance Mediation Directive* is not required to supply a change to the details of *cross border services* notice.
- 13.8.2 G *UK firms* passporting under the ~~*Banking Consolidative Directive*~~ *CRD*

or the *Insurance Directives* may be required to submit the change to details notice in the language of the *Host State* as well as in English.

...

### 13.10 Applicable provisions

- 13.10.2 G *UK firms* passporting under the ~~*Banking Consolidation Directive*~~ CRD should note that, under the Directive, the *Host State* is responsible, together with the *PRA*, for monitoring the liquidity of a *branch* established by a *UK firm* in another *EEA State*.

...

### 13 Annex 1 **Passporting: Notification of intention to establish a branch in another EEA state**

- R This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fsa.gov.uk/Pages/doing/index.shtml>  
<http://www.bankofengland.co.uk/pr/Pages/authorisations/passporting/notifying.aspx>  
 The forms are also to be found through the following address:  
*Passporting: Notification of intention to establish a branch in another EEA state - SUP 13 Annex 1*

In the *SUP 13 Annex 1* form, on page 1 substitute 'Capital Requirements Directive' for 'Banking Consolidation Directive'.

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### 13 Annex 4 **Passporting: ~~Banking Consolidation Directive~~ Capital Requirements Directive**

- R This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fsa.gov.uk/Pages/doing/index.shtml>  
<http://www.bankofengland.co.uk/pr/Pages/authorisations/passporting/notifying.aspx>

The forms are also to be found through the following address:

*Passporting: ~~Banking Consolidation Directive~~ Capital Requirements Directive - SUP 13 Annex 4*

Throughout the form in *SUP 13 Annex 4* substitute ‘Capital Requirements Directive’ for ‘Banking Consolidation Directive’ and ‘CRD’ for ‘BCD’.

### 13A Qualifying for authorisation under the Act

...

- 13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
- ...
- (b) authorised in Gibraltar under the ~~*Banking Consolidation Directive*~~ *CRD*; or
- (c) authorised in Gibraltar under the *Insurance Mediation Directive*; or

...

The notification procedure

...

- 13A.5.3 G (2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the *Act*, the information to be contained in the regulator’s notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations* and in the case of *CRD*, the information has been prescribed in the technical standards issued pursuant to and under Article 39 of the *CRD*.
- 13A.5.4 G (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *Insurance Mediation Directive*, if the appropriate *UK regulator* receives a regulator's notice or, where no notice is required (in the case of an *EEA firm* passporting under the ~~*Banking Consolidation Directive*~~), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the appropriate *UK regulator* will,

under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.

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### 13A Annex 1 G Application of the Handbook to Incoming EEA Firms

1. ....		
....		
<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
<i>PRIN</i>	The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i> ( <i>PRIN</i> 3.1.1R(1)). For an <i>incoming EEA firm</i> which is a <del>BCD</del> <i>CRD credit institution</i> without a <i>top-up permission</i> , <i>Principle 4</i> applies only in relation to the liquidity of a branch established in the <i>United Kingdom</i> ( <i>PRIN</i> 3.1.1 R (2)).	
...		
<i>BIPRU</i>	<del><i>EEA firms</i> are subject to the prudential standards of their home state regulator (<i>BIPRU</i> 1.1.7 R and <i>BIPRU</i> 1.1.9 G).</del> However, <i>BIPRU</i> 12 applies to an <i>EEA firm</i> as respects the activities of its <i>UK branch</i> , but in relation to <i>liquidity risk</i> only.	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
...		



<u>IFPRU</u>	<u>EEA firms that are investment firms (as defined in the EU CRR) are subject to the EU CRR as implemented by their home state regulator (IFPRU 1.1.5R).</u>	Does not apply if the <u>firm has permission only for cross border services and does not carry on regulated activities in the United Kingdom.</u>
...		
COMP	Applies, except in relation to the <i>passported activities</i> of a <i>MiFID investment firm</i> , a <del>BCD</del> <u>CRD credit institution</u> (other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <del>Banking Consolidation Directive</del> <u>CRD</u> ), an <i>IMD insurance intermediary</i> or a <i>UCITS management company carrying on non-core services under Article 6.3 of the UCITS Directive</i> and an <i>incoming AIFM branch</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of " <i>participant firm</i> "). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see COMP 14 (Participation by EEA Firms)).	Does not apply in relation to the <i>passported activities</i> of an <i>MiFID investment firm</i> , a <del>BCD</del> <u>CRD credit institution</u> , an <i>IMD insurance intermediary</i> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an <i>incoming EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. <sup>8</sup> Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see COMP 5)

### 13A Annex 2 G Matters reserved to a Home State regulator

Introduction
...

Requirements in the interest of the general good		
2.	The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :	
	(1)	...
	...	
	(3)	for a <del><i>BCD</i></del> <i>CRD</i> credit institution, the <i>PRA</i> or <i>FCA</i> , as <i>Host State regulator</i> , is jointly responsible with the <i>Home State regulator</i> under article 41 <del>156</del> of the <del><i>Banking Consolidation Directive</i></del> <i>CRD</i> for supervision of the liquidity of a branch in the <i>United Kingdom</i> ;
	(4)	for a <i>MiFID</i> investment firm including a <del><i>BCD</i></del> - <i>CRD</i> credit institution (which is a <i>MiFID</i> investment firm), the protection of <i>clients'</i> money and <i>clients'</i> assets is reserved to the <i>Home State regulator</i> under <i>MiFID</i> ; and
	(5)	responsibility for participation in compensation schemes for <del><i>BCD</i></del> <i>CRD</i> credit institutions and <i>MiFID</i> investment firm is reserved in most cases to the <i>Home State regulator</i> under the <i>Deposit Guarantee Directive</i> and the <i>Investor Compensation Directive</i> .
...		

## 14.1 Application and Purpose

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14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

- (a) authorised in Gibraltar under the *Insurance Directives*; or
- (b) authorised in Gibraltar under the ~~*Banking Consolidation Directive*~~ *CRD*; or

...

Purpose

14.1.4 G This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations*

made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*.

**Note:** An *EEA bank* is required to comply with the requirements set out in the directly applicable regulations adopted under Articles 35, 36 and 39 CRD.

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## 14.2 Changes to branch details

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Firms passporting under the ~~Banking Consolidation Directive~~ CRD and the UCITS Directive

- 14.2.2 G (1) Where an *incoming EEA firm* passporting under the ~~*Banking Consolidation Directive*~~ CRD or the *UCITS Directive* has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.

...

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the ~~*Banking Consolidation Directive*~~ CRD, UCITS Directive or Insurance Directive

...

## 14.6 Cancelling qualification for authorisation

Incoming EEA firms

- 14.6.1 G Section 34 of the *Act* states that an *incoming EEA firm* no longer qualifies for *authorisation* under Schedule 3 to the *Act* if it ceases to be an *incoming EEA firm* as a result of:

- (1) ...
- (2) ceasing to have an *EEA right* in circumstances in which *EEA* authorisation is not required; this is relevant to a *financial institution* that is a subsidiary of a *credit institution* (of the kind mentioned in Article ~~19~~ 34 of the ~~*Banking Consolidation Directive*~~ CRD) which fulfils the conditions in articles ~~18~~ and 19 33 and 34 of that *Directive*.

...

Financial institutions giving up right to authorisation

14.6.4 G Where a *financial institution* (that is a subsidiary of a *credit institution*) is passporting under the ~~*Banking Consolidation Directive*~~ CRD (see SUP 14.6.1G (2)), regulation 9(1) states that the *incoming EEA firm* may request the PRA to direct that its qualification for *authorisation* under Schedule 3 to the Act is cancelled from such date as may be specified in the direction.

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## 15.1 Application

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15.1.3 G In some cases, the application of provisions set out in SUP 15 Annex 1 depends on whether responsibility is reserved to a *Home State regulator*. ~~SYSC App 1 contains guidance on this.~~

...

### Breaches of rules and other requirements in or under the Act

- 15.3.11 R (1) A *firm* must notify the *appropriate regulator* of:
- (a) ...
  - ...
  - (d)
  - (da) a breach of a directly applicable provision in the EU CRR or any directly applicable regulations made under CRD or the EU CRR; or
  - (e) ...
  - ...

## 15 Annex 1 Application of SUP 15 to incoming EEA firms and incoming Treaty firms

R

Applicable sections		Application
SUP 15.1, SUP 15.2	Application, Purpose	Apply in full

<i>SUP</i> 15.3.1R to <i>SUP</i> 15.3.6 G	Matters having a serious regulatory impact	<del><i>SUP</i> 15.3.1R does not apply, otherwise apply in full</del> <u>Apply in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the firm's Home State regulator</u>
....		
<i>SUP</i> 15.3.11 R to <i>SUP</i> 15.3.14 G	...	...
<i>SUP</i> 15.3.15 R to <i>SUP</i> 15.3.16 G	...	...
<i>SUP</i> 15.3.17 R to <i>SUP</i> 15.3.20 G	...	...

...

### App3 Guidance on passporting issues

App 3.3.6 G (1) The European Commission has not produce an interpretative communication on *MiFID*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*, which is repealed and replaced by the *CRD*.

(2) ...

...

### App 3.9 Mapping of MiFID, ~~Banking Consolidation Directive~~ *CRD*, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.1 G The following Tables 1, 2, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to firms considering undertaking *passporting activities* under the ~~*Banking Consolidation Directive*~~ *CRD*, *MiFID*, the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the ~~*Banking Consolidation Directive*~~ CRD, *MiFID*, the *UCITS Directive* of the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passported activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

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App 3.9.4 Activities set out in Annex 1 of the ~~BCD~~ CRD

	Table 1: <del>BCD</del> <u>CRD</u> activities		Part II RAO Activities	Part III RAO Investments
	1.	<del>Acceptance of</del> <u>Taking</u> deposits and other repayable funds from the public	Article 5	Article 74
	...			
	15.	<u>Issuing electric money</u>	<u>Article 9B</u>	<u>Article 74A</u>
	...			
<p>Note 1 : The services and activities provided for in Sections A and B of Annex I of <i>MiFID</i> when referring to the <i>financial instruments</i> provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the <del>BCD</del> <u>CRD</u> from 1 <del>November 2007</del> <u>January 2013</u>. See the table at <i>SUP</i> App 3.9.5G below for mapping of <i>MiFID investment services and activities</i>. For further details relating to this residual category, please see the <del>“Banking Consolidation Directive”</del> <u>“CRD”</u> section of the passporting forms entitled “Notification of intention to establish a branch in another EEA State” and “Notification of intention to provide cross border services in another EEA State”.</p>				

**Part 2:** Comes into force on date specified by a subsequent PRA Board instrument.

### 13A Annex 1 Application of the Handbook to Incoming EEA Firms

...		
<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
<i>PRIN</i>	The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator (PRIN 3.1.1R(1))</i> . For an <i>incoming EEA firm</i> which is a <i>CRD credit institution</i> without a <i>top-up permission</i> , <i>Principle 4</i> applies only in relation to the liquidity of a branch established in the <i>United Kingdom (PRIN 3.1.1R(2))</i> .	...
....		
<i>BIPRU</i>	<i>BIPRU 12</i> applies to an <i>EEA firm</i> as respects the activities of its <i>UK branch</i> , but in relation to <i>liquidity risk</i> only.	
...		
<i>SUP</i>	<b>SUP 16 (Reporting requirements)</b> Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is: (a) <del>a bank</del> ; or [deleted] ...	...

...		
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### 13A Annex 2 Matters reserved to a Home State regulator

Introduction		
...		
Requirements in the interest of the general good		
2.	The Single Market Directives, and the Treaty (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the Home State regulator. To summarise, the FCA or PRA, as Host State regulator, is entitled to impose requirements with respect to activities carried on within the United Kingdom if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the Single Market Directives:	
	(1)	....
	(2)	....
	(3)	<del>for a CRD credit institution, the PRA or FCA, as Host State regulator, is jointly responsible with the Home State regulator under article 156 of the CRD for supervision of the liquidity of a branch in the United Kingdom [deleted]</del>
...		