

Investment Funds sourcebook

Chapter 1

Introduction

1.1 Application and purpose

1.1.1

R

(1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
<i>full-scope UK AIFM of an unauthorised AIF</i>	Chapters 1, 3 and 10
<i>full-scope UK AIFM of an authorised AIF</i>	Chapters 1, 3 and 10
<i>full-scope UK AIFM of an LTIF</i>	Chapters 1, 3, 4.2 and 10
<i>full-scope UK AIFM of a non-UK AIF</i>	Chapters 1, 3 and 10
<i>small authorised UK AIFM of an authorised AIF</i>	Chapter 1
<i>small authorised UK AIFM of an unauthorised AIF</i>	Chapter 1
<i>depository of an AIF managed by a full-scope UK AIFM</i>	Chapters 1 and 3
<i>depository of an LTIF managed by a full-scope UK AIFM</i>	Chapters 1, 3 and 4.2

(2) A residual CIS operator is not subject to the requirements in FUND.

(3) ■ FUND 10 will apply to a UK AIFM which intends to *market* on a cross-border basis.

1.1.2

R

Compatibility with AIFMD and the AIFMD level 2 regulation

Handbook rules which conflict with either a *rule* which transposed AIFMD or a provision in the AIFMD level 2 regulation are modified to the extent necessary to be compatible with those *rules* and provisions.

Interaction between FUND and COLL

1.1.3

G

A full-scope UK AIFM of an authorised AIF is subject to the requirements in FUND and COLL. The effect of ■ FUND 1.1.2 R is that if a rule in COLL which applies to a UK AIFM, an ICVC that is an AIF, or a UK depositary of an AIF conflicts with either a rule in FUND transposing AIFMD or the AIFMD level 2 regulation, the COLL rule is modified to the extent necessary to be compatible with the FUND rule or the AIFMD level 2 regulation.

1.2 Structure of the Investment Funds sourcebook

Structure of the Investment Funds sourcebook

1.2.1

G

FUND is structured as follows:

- (1) ■ **FUND 1** sets out the broad application of *FUND* and describes the types of *fund* manager to whom *FUND* applies.
- (2) [deleted]
- (3) ■ **FUND 3** sets out the baseline requirements that apply to all *full-scope UK AIFM*.
- (4) ■ **FUND 4** sets out some requirements in relation to specialist AIF regimes, including the LTIF regimes.
- (10) ■ **FUND 10** sets out the requirements that apply to an *AIFM* that operates on a cross-border basis.

1.3 Types of fund manager

Types of fund manager within the scope of the UK AIFM and UCITS regimes

- 1.3.1 **G** The *UK* regulatory regime provides that an *undertaking* which manages an *AIF* or a *UCITS scheme* in the *UK* must fall into one or both of the following categories:
- (1) an *AIFM*; or
 - (2) a *UCITS management company*.

Types of fund manager outside the scope of the UK AIFM and UCITS regimes

- 1.3.2 **G** An *authorised person* that operates a *collective investment scheme* in the *UK* and falls entirely outside the scope of the *UK AIFM* or *UCITS* regimes will be a *residual CIS operator*.

AIFMs

- 1.3.3 **G** An *AIFM* with a *Part 4A permission of managing an AIF* will be a *UK AIFM* and must fall into at least one of the following categories:
- (1) a *full-scope UK AIFM*;
 - (2) a *small authorised UK AIFM* of an *authorised AIF*; and
 - (3) a *small authorised UK AIFM* of an *unauthorised AIF*.

Full-scope UK AIFM

- 1.3.4 **G**
- (1) A *full-scope UK AIFM* is a *UK AIFM* which is authorised in accordance with the *UK AIFM* regime and, therefore, subject to its full requirements.
 - (2) A *full-scope UK AIFM* must be either:
 - (a) an *external AIFM*; or
 - (b) an *internally managed AIF*.
 - (3) PERG 16, question 3.6 provides guidance on where an *AIFM* is acting as an *external AIFM* or an *internally managed AIF*.

- (4) A *full-scope UK AIFM* is permitted under ■ FUND 1.4.3 R (3) to ■ FUND 1.4.3 R (6) to provide certain additional services. Where it carries on those services it is also an *AIFM investment firm* and subject to additional requirements for those services.

Small AIFM

1.3.5

G

- (1) [deleted]
- (2) In the *UK*, the regulatory regime provides that an *AIFM* which has assets under management below certain thresholds (“a *small AIFM*”), with a registered office in the *UK* may be either:
- (a) a *small authorised UK AIFM*; or
 - (b) a *small registered UK AIFM*.

Small authorised UK AIFM

1.3.6

G

- (1) A *small authorised UK AIFM* will be carrying on the *regulated activity of managing an AIF* and will be subject to *FCA rules* in respect of that activity. The application of *FCA rules* to a *small authorised UK AIFM* will depend on whether it manages an *authorised AIF* or an *unauthorised AIF*. A *small authorised UK AIFM* which manages an *authorised AIF* will be subject to the requirements in *COLL*, but a *small authorised UK AIFM* of an *unauthorised AIF* will not be subject to *COLL*.
- (2) A *small authorised UK AIFM* may also opt in to the full requirements of the *UK AIFM regime*, in which case it will become a *full-scope UK AIFM*.

Small registered UK AIFM

1.3.7

G

A *small registered UK AIFM* will not be carrying on a *regulated activity* in respect of its activities as an *AIFM* for an *AIF* for which it is entitled to be registered. Regulation 10 of the *AIFMD UK regulation* provides for three categories of *small registered UK AIFM*:

- (1) to fall within the first category the *AIFM* must:
- (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*;
 - (c) be an *internally managed AIF* of an *AIF* which is a *body corporate* and is not a *collective investment scheme*; and
 - (d) not be an *external AIFM*.
- (2) to fall within the second category the *AIFM* must:
- (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*; and
 - (c) only manage *AIFs* which:
 - (i) are *collective investment schemes*;
 - (ii) are not authorised *AIFs*;

- (iii) holds the majority of their assets as land, directly or indirectly, through an entity which also meets the conditions in (ii) to (iv) of this sub-paragraph (but this condition does not apply during the first 180 days and the last 180 days of the period during which the undertaking is an *AIF*);
 - (iv) do not hold any *specified investments* other than:
 - (aa) *contracts of insurance* which relate to land held by the *AIF*; and
 - (bb) *shares* through which the *AIF* holds land; and
 - (v) are operated, or will be established and operated, by a *person* with a *Part 4A permission* to carry on the regulated activity of *establishing, operating or winding up a collective investment scheme*.
- (3) to fall within the third category the *AIFM* must:
- (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*; and
 - (c) have applied for registration as a *SEF manager* or *RVECA manager* and meet the conditions for such registration.

1.3.8

G Under regulation 16 of the *AIFMD UK regulation* a *small registered UK AIFM* may apply to the *FCA* for a *Part 4A permission* to manage an *AIF*. In its application a *small registered UK AIFM* may apply to become:

- (1) a *small authorised UK AIFM*; or
- (2) a *full-scope UK AIFM*.

1.4 AIFM business restrictions

Single AIFM

1.4.1

R

A *full-scope UK AIFM* must ensure that for each *AIF* it is appointed to manage, it is the only *AIFM* of that *AIF*, and is responsible for ensuring compliance with *FUND*, other *rules* in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation*, the *AIFMD UK regulation*, and the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime*.

[Note: article 5(1) of *AIFMD*]

Internally managed AIFs

1.4.2

R

An *internally managed AIF* which is a *full-scope UK AIFM* must not engage in any activities other than *AIFM management functions* in respect of that *AIF*.

[Note: article 6(3) of *AIFMD*]

External AIFMs

1.4.3

R

An *external AIFM* that is a *full-scope UK AIFM* must not engage in any activities other than:

- (1) *AIFM management functions*;
- (2) the management of *UCITS*, for which it must have *permission* to carry on the *regulated activity of managing a UK UCITS*;
- (3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for occupational pension schemes, within the meaning of section 1(1) of the Pension Schemes Act 1993;
- (4) investment advice;
- (5) safe-keeping and administration in relation to shares or units of collective investment undertakings; and
- (6) reception and transmission of orders in relation to *financial instruments*.

[Note: article 6(2) and (4) of *AIFMD*]

- 1.4.4** **R** An external *AIFM* that is a *full-scope UK AIFM* must not provide:
- (1) only the services in ■ FUND 1.4.3 R (3) to ■ FUND 1.4.3 R (6); or
 - (2) only the services in ■ FUND 1.4.3 R (4) to ■ FUND 1.4.3 R (6) without also having been authorised to provide the services in ■ FUND 1.4.3 R (3); or
 - (3) only the *AIFM management functions* in point 2 of Annex I of *AIFMD*; or
 - (4) the *AIFM investment management function* in point 1(a) (portfolio management) of Annex I of *AIFMD* without also providing the *AIFM investment management functions* in point 1(b) (risk management) of Annex I of *AIFMD* or vice versa.

1.4.5 **G** Where a *full-scope UK AIFM* carries on the activities in ■ FUND 1.4.3R (3) and ■ (4) in relation to assets which are not *financial instruments* and it is not carrying on the activities of *managing investments* or *advising on investments*, the *FCA* will deem the *firm* as having been authorised to carry on such activities by virtue of its authorisation as an *AIFM*. However, for such an *AIFM* to be able to carry on the activity in ■ FUND 1.4.3R (4) in relation to assets which are *financial instruments* or the activities in ■ FUND 1.4.3R (5) and ■ (6) it must have a *Part 4A permission to manage investments*.

1.4.6 **G** In the *FCA*'s view an *AIFM* is permitted under ■ FUND 1.4.3 R to carry out *AIFM management functions* for a collective investment undertaking which is neither an *AIF* nor a *UCITS*.

AIFM management functions

- 1.4.7** **G** *AIFM management functions* are set out in Annex I of *AIFMD* as follows:
- (1) the *AIFM investment management functions* of:
 - (a) portfolio management; and
 - (b) risk management; and
 - (2) other functions that an *AIFM* may additionally perform in the course of the collective management of an *AIF*:
 - (a) administration:
 - (i) legal and fund management accounting services;
 - (ii) *customer enquiries*;
 - (iii) valuation and pricing (including tax returns);
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of *unit/share* holder register;
 - (vi) distribution of income;
 - (vii) *unit* issues and redemptions;
 - (viii) contract settlements (including certificate dispatch); and
 - (ix) record keeping;
 - (b) *marketing*; and

- (c) activities related to the assets of *AIFs*, namely:
- (i) services necessary to meet the fiduciary duties of the *AIFM*;
 - (ii) facilities management;
 - (iii) real estate administration activities;
 - (iv) advice to *undertakings* on capital structure, industrial strategy and related matters;
 - (v) advice and services relating to mergers and the purchase of *undertakings*; and
 - (vi) other services connected to the management of the *AIF* and the companies and other assets in which it has invested.

[Note: Annex I of *AIFMD*]