

Chapter 10

Operating on a cross-border basis



10.1 Application and purpose

Application

- 10.1.1 **G** (1) This chapter applies to the following types of *firm* in relation to the activities in (2):
- (a) a *full-scope UK AIFM*;
 - (b) [deleted]
 - (c) a *small non-UK AIFM*; and
 - (d) an *above-threshold non-UK AIFM*.
- (2) The activities to which this chapter relates are the management and *marketing* on a cross-border basis, into or from the *UK* of:
- (a) a *UK AIF*; and
 - (b) a *non-UK AIF*.
 - (c) [deleted]

Purpose

- 10.1.2 **G** The purpose of this chapter is to provide *guidance* on the requirements that apply to the types of *firm* set out in **FUND 10.1.1 G** when operating on a cross-border basis into or from the *UK*.

Introduction

- 10.1.3 **G** [deleted]
- 10.1.4 **G** [deleted]
- 10.1.5 **G** (1) There are specific provisions for third country *AIFs* and *AIFMs* (ie, in relation to *non-UK AIFs* and *non-UK AIFMs*) and the *marketing* of a *UK AIF* or a *non-UK AIF* that is a *feeder AIF*, the *master AIF* of which is managed by a *non-UK AIFM* or is a *non-UK AIF*.
- (2) A *UK AIFM* is allowed to manage a *non-UK AIF* from the *UK*.
- (3) In addition, the *UK* allows the *marketing* by the following types of *AIFM* in the *UK*:
- (a) a *full-scope UK AIFM* of:

- (i) a *UK AIF* that is a *feeder AIF*, the *master AIF* of which is managed by a *non-UK AIFM* or is a *non-UK AIF* and;
- (ii) a *non-UK AIF*;
- (b) [deleted]
- (c) a *non-UK AIFM* of:
 - (i) a *UK AIF*; and
 - (ii) a *non-UK AIF*.
 - (iii) [deleted]



**10.2 AIFM management passport
[deleted]**

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**10.3 AIFM marketing passport
AIFM marketing passport [deleted]**

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10.4 AIFM third country management

Application

- 10.4.1 **G** This section applies to a *full-scope UK AIFM* of a *non-UK AIF* that is not marketed in the UK to UK investors.

Applicable requirements

- 10.4.2 **G** A *full-scope UK AIFM* may manage a *non-UK AIF* subject to the satisfaction of certain conditions. If the *AIF* is not marketed, these conditions are that:
- (1) the *AIFM* complies with the full requirements of *FUND*, other rules in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation*, the *AIFMD UK regulation* in respect of that *AIF*, except **FUND 3.3** (Annual reporting) and **FUND 3.11** (Depositaries), the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime*; and
 - (2) (in accordance with regulation 33 of the *AIFMD UK regulation*) appropriate cooperation arrangements are in place between the *FCA* and the supervisory authorities of the country where the *non-UK AIF* is established in order to ensure an efficient exchange of information that allows *FCA* to carry out its duties in accordance with *FUND*, other rules in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *UK AIFMD regulation*.
- 10.4.3 **G** As a result, a *full-scope UK AIFM* of a *non-UK AIF* that is not marketed is required to comply with:
- (1) all of **FUND 3** with the exception of **FUND 3.3** (Annual report of an *AIF*), **FUND 3.11** (Depositaries) and **FUND 3.12** (Marketing in the UK); and
 - (2) such other provisions of the *FCA Handbook* as are applicable to a *full-scope UK AIFM*.
- 10.4.4 **G** If a *full-scope UK AIFM* wishes to market in the UK a that it manages, the *AIFM* must comply with the relevant requirements, as explained in **FUND 10.5.3 G** to **FUND 10.5.5 G** (Marketing of third country AIFs managed by full-scope UK AIFMs).



10.5 National private placement

Application

10.5.1 **G** This section applies to the following types of *AIFM* that intend to market an *AIF* in the *UK*:

- (1) a *full-scope UK AIFM* of:
 - (a) a *feeder AIF* that is a *UK AIF*, the *master AIF* of which is managed by a *non-UK AIFM* or is a *non-UK AIF*; and
 - (b) a *non-UK AIF*;
- (2) [deleted]
- (3) [deleted]
- (4) an *above-threshold non-UK AIFM* of:
 - (a) a *UK AIF*; and
 - (b) [deleted]
 - (c) a *non-UK AIF*.

Introduction

10.5.2 **G** Marketing in the *UK* only of the types of *AIF* set out in **■ FUND 10.5.1 G** is permitted subject to certain conditions (see Part 6 (Marketing) of the *AIFMD UK regulation*). In accordance with these provisions, an *AIFM* of the type set out in **■ FUND 10.5.1 G** may *market* an *AIF* in the *UK* providing it has notified the *FCA* of its intention to *market*, it meets the relevant conditions in the *AIFMD UK regulation* and the *FCA* has not suspended or revoked the *AIFM*'s entitlement to *market* the *AIF*. The *AIFM* is entitled to *market* the *AIF* as soon as a notification containing all of the required information has been sent to the *FCA*.

Marketing of third country AIFs managed by full-scope UK AIFMs

10.5.3 **G** In accordance with regulation 57 of the *AIFMD UK regulation*, a *full-scope UK AIFM* may *market* the following types of *AIF* in the *UK* by submitting a notification to the *FCA* in the form in **■ FUND 10 Annex 1 D**:

- (1) a *feeder AIF* that is a *UK AIF* the *master AIF* of which is managed by a *non-UK AIFM* or is a *non-UK AIF*; and
- (2) a *non-UK AIF*.

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To allow the *AIFM* to comply with regulation 57(4), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) subject to (2), the *AIFM* complies with the requirements of *FUND*, other rules in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation*, the *AIFMD UK regulation*, the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime* in respect of that *AIF*;
- (2) the *AIFM* is not required to comply with the requirements of ■ FUND 3.11 (Depositaries) provided the *AIFM*:
 - (a) ensures that one or more entities, other than the *AIFM*, are appointed to carry out the duties in ■ FUND 3.11.20R to ■ 3.11.23R and ■ 3.11.25R; and
 - (b) informs the *FCA* about the identity of each entity;
- (3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the *FCA* and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *FUND*, other rules in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *AIFMD UK regulation*, the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime*; and
- (4) the country where the *non-UK AIF* is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.5

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- (1) As a result of *marketing* an *AIF* in the *UK*, a *full-scope UK AIFM* is required to comply with:
 - (a) all of ■ FUND 3, except certain sections of ■ FUND 3.11 (Depositaries) (as set out in ■ FUND 3.11.33R (AIFM of a non-UK AIF)) and ■ (Marketing in the UK); and
 - (b) such other provisions of the *FCA Handbook* that apply to a *full-scope UK AIFM* of a *UK AIF*.
- (2) A *full-scope UK AIFM* managing a *non-UK AIF* that is not *marketed* should note that the rules it needs to comply with will change in relation to that *AIF* as a result of the *AIF* being *marketed* (see ■ FUND 10.4.3 G for details of the rules that apply to a *full-scope UK AIFM* managing, a *non-UK AIF* that is not *marketed*). In particular, an *AIFM* will be subject to the annual report requirements in ■ FUND 3.3 (Annual report of an AIF) and some of the depositary provisions in ■ FUND 3.11 (Depositaries) (as set out in ■ FUND 3.11.33 R (AIFM of a non-UK AIF)).

Marketing of AIFs managed by small third-country AIFMs

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In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a *small non-UK AIFM* may

market an AIF in the UK managed by it by submitting a notification to the FCA in the form set out in ■ FUND 10 Annex 1 D.

10.5.7 **G** To allow the *AIFM* to comply with the requirements of regulation 58(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) the *AIFM* is the person responsible for complying with the implementing provisions relating to the *marketing* of the *AIF* (as explained in ■ FUND 10.5.8 G); and
- (2) the *AIFM* is a *small non-UK AIFM*.

10.5.8 **G** As a result of *marketing an AIF in the UK*, a *small non-UK AIFM* is required to provide the *FCA* with information on:

- (1) the main instruments in which the *AIFM* trades; and
- (2) the principal exposures and most important concentrations of the *AIFs* it manages.
in accordance with SUP 16.18 (AIFMD reporting).

Marketing of AIFs managed by other third-country AIFMs

10.5.9 **G** In accordance with regulation 59 of the *AIFMD UK regulation*, an *above-threshold non-UK AIFM* may *market a UK AIF or a non-UK AIF in the UK* managed by it by submitting a notification to the *FCA* in the form in ■ FUND 10 Annex 1 D.

10.5.10 **G** To allow the *AIFM* to comply with the requirements of regulation 59(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) the *AIFM* is the person responsible for complying with the implementing provisions relating to the *marketing* of the *AIF* (see ■ FUND 10.5.11 G);
- (2) the *AIFM* complies with the requirements of ■ FUND 3.2 (Investor information), 3.3 (Annual report of an AIF), and 3.4 (Reporting obligations to the FCA) in so far as such provisions are relevant to the *AIFM* and the *AIF* to be *marketed*;
- (3) if applicable, the *AIFM* complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the *AIFMD UK regulation* in relation to the *AIF* to be *marketed*;
- (4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:
 - (a) the *FCA* and, if applicable, the *competent authorities* of the other country where the *AIF* is *established*; and

(b) the supervisory authorities of the country where the *non-UK AIFM is established* and, if applicable, of the country where the *non-UK AIF is established*,

to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *AIFMD*; and

(5) the third country where the *non-UK AIF is established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 G As a result of *marketing* an *AIF* in the *UK*, an *above-threshold non-UK AIFM* is required to comply with:

(1) the requirements that apply to a *full-scope UK AIFM* in ■ FUND 3.2 (Investor information), ■ FUND 3.3 (Annual report of an AIF) and ■ FUND 3.4 (Reporting obligations to the FCA) in so far as such provisions are relevant to the *AIFM* and the *AIF*; and

(2) if applicable, Part 5 (AIFs which acquire control of non-listed companies and issuers) of the *AIFMD UK regulation*.

10.5.11A G (1) (a) A provision of ■ FUND 3.2 (Investor Information), ■ FUND 3.3 (Annual report of the AIF) or ■ FUND 3.4 (Reporting obligations to the FCA) will not be relevant to an *above-threshold non-UK AIFM* and the *AIF* it *markets*, if it relates to another provision to which the *AIFM* is not subject.

(b) For example, the *AIFM* does not need to comply with ■ FUND 3.2.2R (5) because it is not subject to the professional negligence requirements in *IPRU(INV)* 11.3.11G (Professional negligence).

(2) (a) However, the *AIFM* should comply with the substance of the provisions of ■ FUND 3.2 (Investor Information), ■ FUND 3.3 (Annual report of the AIF) or ■ FUND 3.4 (Reporting obligations to the FCA) to the extent that these are relevant to the *AIFM* and the *AIF*.

(b) For example:

(i) the *AIFM* should make the latest net asset value of the *AIF* or latest market price of the *unit* or *share* of the *AIF* available to investors before they invest, but it does not need to do so in line with ■ FUND 3.9 (Valuation), because it is not subject to these provisions; and

(ii) the *AIFM* should include information in its annual report in relation to the *remuneration* paid by the *AIFM* to its staff as set out in ■ FUND 3.3.5R (5) and ■ FUND 3.3.5R (6), but it does not need to do so in line with the requirements in ■ SYSC 19B, because it is not subject to those provisions.

(3) An *AIFM* should comply with the provisions in ■ FUND 3.3 (Annual report of the AIF) in relation to the first financial year end date of the *AIF* following the *AIFM's* notification to the *FCA* of its intention to *market* the *AIF* in the *UK*.

10.5.11B **G** An *above-threshold non-EEA AIFM* should report on a quarterly basis to the FCA the information in ■ FUND 3.4.2R, ■ FUND 3.4.3R and (if applicable) ■ FUND 3.4.5R for each *AIF* that is not *marketed* in the *UK* if:

- (1) that *AIF* is a *master AIF* managed by the *AIFM*;
- (2) the *AIFM* markets the *feeder AIF* of that *master AIF* in the *UK*; and
- (3) the *AIFM* is subject to quarterly reporting under article 110 of the *AIFMD level 2 regulation* (see ■ SUP 16.18.4EU) for the *feeder AIF*.

Further guidance on marketing an AIF.....

10.5.12 **G** Further *guidance* on marketing an *AIF* can be found in ■ PERG 8.37 (AIFMD marketing).

Provision of key information document in accordance with the PRIIPs Regulation.....

10.5.13 **G** An *AIFM* that makes an *AIF* available to *retail clients* in the *United Kingdom* will need to draw up a *key information document* in accordance with the *PRIIPs Regulation*.

National private placement notification

This annex consists of one or more forms. Forms can be completed online by visiting <https://www.fca.org.uk/firms/nppr>

