

## 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]

	<b>10.2</b> <b>AIFM management passport</b> [deleted]
[deleted]	



10.3 AIFM marketing passportAIFM marketing passport [deleted]

[deleted]

## 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*.

10.5.4

G

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

G

- (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

10.5.6

G

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



		<p><i>market</i> an <i>AIF</i> in the <i>UK</i> managed by it by submitting a notification to the <i>FCA</i> in the form set out in ■ FUND 10 Annex 1 D.</p>
10.5.7	G	<p>To allow the <i>AIFM</i> to comply with the requirements of regulation 58(2), the notification includes a statement from the <i>AIFM</i> confirming that the following conditions are met:</p> <ul style="list-style-type: none"> <li>(1) the <i>AIFM</i> is the person responsible for complying with the implementing provisions relating to the <i>marketing</i> of the <i>AIF</i> (as explained in ■ FUND 10.5.8 G); and</li> <li>(2) the <i>AIFM</i> is a <i>small non-UK AIFM</i>.</li> </ul>
10.5.8	G	<p>As a result of <i>marketing</i> an <i>AIF</i> in the <i>UK</i>, a <i>small non-UK AIFM</i> is required to provide the <i>FCA</i> with information on:</p> <ul style="list-style-type: none"> <li>(1) the main instruments in which the <i>AIFM</i> trades; and</li> <li>(2) the principal exposures and most important concentrations of the <i>AIFs</i> it manages.</li> </ul> <p>in accordance with SUP 16.18 (AIFMD reporting).</p>
		<p><b>Marketing of AIFs managed by other third-country AIFMs</b></p>
10.5.9	G	<p>In accordance with regulation 59 of the <i>AIFMD UK regulation</i>, an <i>above-threshold non-UK AIFM</i> may <i>market</i> a <i>UK AIF</i> or a <i>non-UK AIF</i> in the <i>UK</i> managed by it by submitting a notification to the <i>FCA</i> in the form in ■ FUND 10 Annex 1 D.</p>
10.5.10	G	<p>To allow the <i>AIFM</i> to comply with the requirements of regulation 59(2), the notification includes a statement from the <i>AIFM</i> confirming that the following conditions are met:</p> <ul style="list-style-type: none"> <li>(1) the <i>AIFM</i> is the person responsible for complying with the implementing provisions relating to the <i>marketing</i> of the <i>AIF</i> (see ■ FUND 10.5.11 G);</li> <li>(2) the <i>AIFM</i> complies with the requirements of ■ FUND 3.2 (Investor information), 3.3 (Annual report of an AIF), and 3.4 (Reporting obligations to the <i>FCA</i>) in so far as such provisions are relevant to the <i>AIFM</i> and the <i>AIF</i> to be <i>marketed</i>;</li> <li>(3) if applicable, the <i>AIFM</i> complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the <i>AIFMD UK regulation</i> in relation to the <i>AIF</i> to be <i>marketed</i>;</li> <li>(4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between: <ul style="list-style-type: none"> <li>(a) the <i>FCA</i> and, if applicable, the <i>competent authorities</i> of the other country where the <i>AIF</i> is <i>established</i>; and</li> </ul> </li> </ul>

- (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*.
- 10
- Release 37 ● Jun 2024

www.handbook.fca.org.uk

FUND 10/11



## 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>

