# Chapter 3

# Requirements for alternative investment fund managers

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## 3.10 Delegation

### Application

3.10.1 | R | This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) [deleted]

(3) a *non-UK AIF*

in relation to the delegation of those *AIFM management functions* for which it is responsible, other than supporting tasks such as administrative or technical functions.

[**Note**: recital 31 of *AIFMD*]

### General delegation requirements

3.10.2 | R | An *AIFM* must ensure the following conditions are met when a delegate carries out any function on its behalf:

(1) the *AIFM* has notified the *FCA* of the delegation before the delegation arrangements become effective; and

(2) (a) the *AIFM* is able to justify its entire delegation structure with objective reasons;

(b) the delegate has sufficient resources to perform the respective activity and the persons who effectively conduct the business of the delegate are of sufficiently good repute and experience;

(c) (subject to ■ FUND 3.10.7 G) the delegation of *AIFM investment management functions* is conferred only on a delegate that is authorised or registered for the purpose of asset management and subject to supervision;

(d) in addition to (c), where the delegation of *AIFM investment management functions* is conferred on a non-*UK* delegate, cooperation between the *FCA* and the supervisory authority of the delegate is ensured;

(e) the delegation does not prevent the *FCA* from supervising the *AIFM* effectively and, in particular, does not prevent the *AIFM* from acting, or the *AIF* from being managed, in the best interests of its investors; and

(f) the *AIFM* is able to demonstrate that:

(i) the delegate is qualified and capable of undertaking the functions in question;

(ii) it was selected with all due care; and

(iii) the *AIFM* can monitor the delegated activity effectively at any time, give further instructions to the delegate at any time and withdraw the delegation with immediate effect when this is in the interest of investors.

[**Note**: article 20(1) of *AIFMD*]

**3.10.2A** [R] An *AIFM* must notify the *FCA* of delegation arrangements under ■ FUND 3.10.2R (1) using the form in ■ FUND 3 Annex 2 R.

**3.10.3** [G] For the purposes of ■ FUND 3.10.2R (2)(d) cooperation is ensured between the *FCA* and the supervisory authorities of a delegate which is not established in the *UK* where a cooperation arrangement is in place between the two authorities in accordance with article 78(3) of the *AIFMD level 2 regulation*.

### Sub-delegation

**3.10.4** [R] An *AIFM* must ensure the following conditions are met when any of its delegates carries out a sub-delegation:

(1) the *AIFM* has consented to the sub-delegation before the sub-delegation arrangements become effective;

(2) the *AIFM* has notified the *FCA* of the sub-delegation before the sub-delegation arrangements become effective; and

(3) the conditions in ■ FUND 3.10.2R (2) (General delegation requirements) are satisfied in relation to the sub-delegation, with references to 'delegate' and 'delegation' replaced by references to 'sub-delegate' and 'sub-delegation'.

[**Note**: article 20(4) of *AIFMD*]

**3.10.4A** [R] An *AIFM* must notify the *FCA* of sub-delegation arrangements under ■ FUND 3.10.4R (2) using the form in ■ FUND 3 Annex 2 R.

**3.10.5** [R] An *AIFM* must comply with the *rules* in this section which are applicable to a sub-delegation in relation to any further sub-delegation of its functions by a sub-delegate.

[**Note**: article 20(6) of *AIFMD*]

### Delegation of AIFM investment management functions

**3.10.6** [R] An *AIFM* must not delegate or consent to the sub-delegation of *AIFM investment management functions* to:

(1) the *depositary* or a delegate of the *depositary*; or

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(2) any other entity whose interests may conflict with those of the *AIFM* or the investors of the *AIF*, unless:

    (a) that entity has functionally and hierarchically separated the performance of its *AIFM investment management function* from its other potentially conflicting tasks; and

    (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the *AIF*.

[**Note**: article 20(2) and (5) of *AIFMD*]

3.10.7    G    The *FCA* may consent to the delegation by a *Full-scope UK AIFM* of its *AIFM investment management functions* to an entity which is not authorised or registered for the purpose of asset management and subject to supervision in accordance with regulation 26 of the AIFMD UK regulation.

3.10.7A    D    An *AIFM* that wishes to apply for the approval of its delegation arrangements in accordance with regulation 26 of the *AIFMD UK regulation* must do so using the form in ■ FUND 3 Annex 2 R.

## Letterbox entity

3.10.8    R    An *AIFM* must not delegate its functions to the extent that, in essence, it can no longer be considered to be the *AIFM* of the *AIF* and to the extent that it becomes a letter-box entity.

[**Note**: article 20(3) of *AIFMD*]

3.10.9    EU    Letter-box entity and AIFM no longer considered to be managing an AIF

1.      An AIFM shall be deemed a letter-box entity and shall no longer be considered to be the manager of the AIF at least in any of the following situations:

    (a)    the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation;

    (b)    the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions in particular in relation to the implementation of the general investment policy and investment strategies;

    (c)    the AIFM loses its contractual rights to inquire, inspect, have access or give instructions to its delegates or the exercise of such rights becomes impossible in practice;

    (d)    the AIFM delegates the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the AIFM itself. When assessing the extent of delegation, competent authorities shall assess the entire delegation structure taking into account not only the assets managed under delegation but also the following qualitative criteria:

        (i)    the types of assets the AIF or the AIFM acting on behalf of the AIF is invested in, and the importance of the assets managed under delegation for the risk and return profile of the AIF;

> (ii) the importance of the assets under delegation for the achievement of the investment goals of the AIF;
>
> (iii) the geographical and sectoral spread of the AIF's investments;
>
> (iv) the risk profile of the AIF;
>
> (v) the type of investment strategies pursued by the AIF or the AIFM acting on behalf of the AIF;
>
> (vi) the types of tasks delegated in relation to those retained; and
>
> (vii) the configuration of delegates and their sub-delegates, their geographical sphere of operation and their corporate structure, including whether the delegation is conferred on an entity belonging to the same corporate group as the AIFM.
>
> [**Note**: Article 82(1) of the *AIFMD level 2 regulation*]

## Liability for delegated functions

**3.10.10**  G  An *AIFM's* liability towards the *AIF* and its investors is not affected by the *AIFM* delegating functions to a third party, or by any further sub-delegation (see regulation 28(1) of the *AIFMD UK Regulation*).

## Review of delegation and sub-delegation

**3.10.11**  R  An *AIFM* must review on an ongoing basis the services provided by each:

(1) delegate appointed under ■ FUND 3.10.2 R; and

(2) sub-delegate appointed under ■ FUND 3.10.4 R.

[**Note**: article 20(1) and 20(4) of *AIFMD*]

**3.10.12**  G  An *AIFM* should make each of its delegates aware of the requirement to review the services provided by each of its sub-delegates on an ongoing basis (see regulation 28(2) of the *AIFMD UK Regulation*).

## Subordinate measures

**3.10.13**  G  Articles 75 to 82 of the *AIFMD level 2 regulation* provide detailed rules supplementing this section.