

Chapter 16

Scope of the Alternative Investment Fund Managers Regime

16.1 Introduction

G **Question 1.1: What is the purpose of the questions and answers in this chapter?**

The purpose is to consider the scope of *regulated activities* specifically relating to the Alternative Investment Fund Managers Directive 2011/61/EU ("*AIFMD*") as it was implemented in the *UK* through the *RAO*. The *AIFMD* regime in the *United Kingdom* is based on the *AIFMD* and the *AIFMD level 2 regulation* as well as other *UK* legislation, including the *AIFMD UK regulation*.

Question 1.2: What are the regulated activities specifically relating to AIFMD?

The *regulated activities* that specifically relate to the *AIFMD* regime in the *United Kingdom* are:

- (1) *managing an AIF* (see ■ PERG 16.3); and
- (2) acting as a depositary of an *AIF* (see ■ PERG 16.4).

Question 1.3: What are the main measures dealing with the scope?

They are the *UK* provisions which implemented the *AIFMD*, which include:

- (1) the *AIFMD level 2 regulation*
- (2) the ESMA document "Guidelines on key concepts of the *AIFMD*" (ESMA/2013/611); and
- (3) the *AIFMD UK regulation* which largely implemented the *AIFMD* in the *UK*.

Question 1.4: What is the approach to deciding whether something is covered by the AIFMD?

When defining what an *AIF* is, the drafters of *AIFMD* faced a dilemma. If there is a precise and detailed definition there is a risk that some funds that should be regulated would fall outside regulation, given the wide variety of legal forms they can take. However, a broad definition entails a risk that *AIFMD* is given a much wider scope than intended. The agreed definition of *AIF* is drafted at a high level of generality and uses words which have a wide meaning. So we have approached ■ PERG 16 by looking at what sorts of entities are clearly meant to be caught and then using that as a guide to identify cases which are not fairly within the definition, to avoid an interpretation that would give an exorbitantly wide scope. In the same way,

descriptions of what is excluded should not be read in a way that would take cases out of scope that are fairly within it.

A number of answers in ■ PERG 16 take a broad purposive interpretation and look at economic substance. The definition of *AIF* is drafted at a high level without much detail and uses broad concepts rather than precise technical or legal ones, meaning that ■ PERG 16 takes a similar approach to interpreting it.

Question 1.5: Are there transitional arrangements?

Yes. Some of the transitional arrangements for implementing the *AIFMD* may affect the date by which a *person* who would otherwise be *managing an AIF* or acting as a depositary of an AIF needs *permission* to do so.

■ PERG 16 does not deal with these arrangements. Details are in Part 9 of the *AIFMD UK Regulation*.