

## Chapter 15

# Long-term asset funds



15.2 Eligibility to act as the authorised fund manager

Application

- 15.2.1
- R
- This section applies to:
- (1) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;

(2) any other *director* of an *ICVC*;

(3) the *depository* of an *AUT*, *ACS* or an *ICVC*; and

(4) an *ICVC*,  
which is a *long-term asset fund*.

Authorised fund manager to be a full-scope UK AIFM

- 15.2.2
- R
- The *authorised fund manager* of a *long-term asset fund* must be a *full-scope UK AIFM*.
- 15.2.3
- G
- (1) To ensure an appropriate degree of *consumer* protection, only a *full-scope UK AIFM* is able to act as the *authorised fund manager* for an *LTAF*.

(2) *Full-scope UK AIFMs* that manage *authorised AIFs* are subject to the requirements of both *COLL* and *FUND*, and must also comply with any other applicable provisions of the *UK AIFM regime*, including the *AIFMD level 2 regulation* and the *AIFMD UK regulation*. *Small authorised UK AIFMs* are subject to a more limited set of *rules* and requirements.

Competence and resources of the authorised fund manager

- 15.2.4
- R
- (1) The *authorised fund manager* of a *long-term asset fund* must, having regard to the investment objectives, policy and strategy of the *LTAF*:

(a) possess the knowledge, skills and experience necessary to understand the activities of the *LTAF* and, in particular, the risks involved in those activities and the assets which the *LTAF* holds (or is to hold) in the *scheme property*; and

(b) employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.

- (2) The *authorised fund manager* may not rely on a delegation or outsourcing arrangement to satisfy (1).

## 15.2.5

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The *authorised fund manager* of a *long-term asset fund* must at all times be able to demonstrate to the *FCA* that it complies with ■ COLL 15.2.4R.

[Note: Article 22 of the *AIFMD level 2 regulation*.]

### Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets

## 15.2.6

**R**

- (1) The *authorised fund manager* of a *long-term asset fund* must appoint an *external valuer* to perform the valuation function for the *LTAF*, but this is subject to (2) and (5).
- (2) The *authorised fund manager* need not appoint an *external valuer* under (1) if:
  - (a) the *authorised fund manager* possesses the knowledge, skills and experience necessary to be able to carry out a proper and independent valuation of the assets and types of assets which the *long-term asset fund* holds or is to hold (see ■ FUND 3.9.4R); and
  - (b) the *depository* of the *long-term asset fund*, having made an assessment of the matters in (a), has determined that the *authorised fund manager* has the resources and procedures for carrying out a valuation of those assets in accordance with the applicable law, the *instrument constituting the fund* and ■ FUND 3.9 (Valuation).
- (3) The *depository* must:
  - (a) review its determination under (2)(b):
    - (i) regularly, and in any event at least annually; and
    - (ii) whenever the *depository* becomes aware of any circumstances which could affect the determination;
  - (b) for a period of six years, keep a written record of its determination under (2)(b) and any review under (3)(a), and the reasons for the assessment; and
  - (c) provide the *FCA* with a copy of the written record on request.
- (4) Where the *authorised fund manager* performs the valuation function itself in accordance with (2), the *authorised fund manager* may appoint, as applicable:
  - (a) for the purpose of valuing immovables in accordance with ■ COLL 15.6.18R (Investment in property), an *appropriate valuer*;
  - (b) for the purpose of valuing immovables in accordance with ■ COLL 15.6.22R (Standing independent valuer and valuation), a *standing independent valuer*;
  - (c) for the purpose of valuing an asset other than an immovable or property, a delegate appointed in accordance with ■ FUND 3.10 (Delegation) and the relevant provisions of section 8 (Delegation of AIFM functions) of Chapter III of the *AIFMD level 2 regulation*.

- (5) The *authorised fund manager* need not appoint an *external valuer* under (1) if:
- (a) the *scheme property* of the *long-term asset fund* is constituted solely of *units* or *shares* in other *collective investment schemes* or *AIFs*; and
  - (b) an *external valuer* performs the valuation function of each such *collective investment scheme* or *AIF*.

[Note: ■ FUND 3.9 (Valuation), ■ FUND 3.10 (Delegation), ■ FUND 3.11.25R (Depositary functions: oversight), article 19(5) of *AIFMD*, and articles 67 to 74 (Valuation) and article 94(4) (Duties regarding the valuation of shares/units) of the *AIFMD level 2 regulation*.]

## 15.2.7

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Where an *authorised fund manager* appoints an *external valuer* under ■ COLL 15.2.6R(1) certain additional requirements apply. For example, ■ FUND 3.9.7R(3) (Performance of the valuation function) sets certain conditions relating to the independence of the *external valuer*, and the *authorised fund manager* will also need to be able to demonstrate the matters set out in ■ FUND 3.9.9R (Appointment of external valuer). The *AIFMD level 2 regulation* contains further requirements that apply to the *authorised fund manager* where an *external valuer* is used. Certain requirements also apply to the *external valuer* and the *depositary* of an *LTAF* with an *external valuer*.

[Note: Articles 67 to 74 and article 94(4) of the *AIFMD level 2 regulation*.]

## 15.2.8

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The *governing body* of the *authorised fund manager* of a *long-term asset fund* must:

- (1) possess the collective knowledge, skills and experience to be able to understand the *authorised fund manager's* activities, in particular, the main risks involved in those activities and the assets in which the *long-term asset fund* is invested;
- (2) have members that commit sufficient time to properly perform their functions in the *authorised fund manager*; and
- (3) have members that act with honesty, integrity and independence of mind.

[Note: Article 21 of the *AIFMD level 2 regulation*.]

## 15.2.9

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- (1) In order to establish whether an *authorised fund manager* of a *long-term asset fund* conducts its activities honestly, fairly and with due skills, the *FCA* is required to assess various matters, including those set out in articles 21 and 22 of the *AIFMD level 2 regulation*. In addition, under ■ COLL 15.2.4R, the *authorised fund manager* must possess the knowledge, skills and experience necessary to understand the activities of the *LTAF* and, in particular, the risks involved in those activities and the assets which the *LTAF* holds (or is to hold) in the *scheme property* without relying on delegation arrangements to satisfy the requirement.
- (2) The *authorised fund manager* of a *long-term asset fund* is subject to various other requirements relating to its governance arrangements;

its organisational structure; the skills, knowledge, expertise and competence of those it employs; and its obligation to act honestly, fairly and with due skill, care and diligence. See for example the *rules* in ■ SYSC 4 (General organisational requirements), ■ SYSC 5 (Employees, agents and other relevant persons) and ■ COBS 2.1 (Acting honestly, fairly and professionally).

- (3) The *authorised fund manager* of a *long-term asset fund* should also note the organisational requirements set out in the *AIFMD level 2 regulation*; for example, article 57 (General requirements).