

Investment Funds sourcebook

Chapter 1

Introduction

1.1 Application and purpose

1.1.1

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(1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
<i>full-scope UK AIFM of an unauthorised AIF</i>	Chapters 1, 3 and 10
<i>full-scope UK AIFM of an authorised AIF</i>	Chapters 1, 3 and 10
<i>full-scope UK AIFM of an ELTIF</i>	Chapters 1, 3, 4.2 and 10
<i>full-scope UK AIFM of an EEA AIF</i>	Chapters 1, 3 and 10
<i>full-scope UK AIFM of a non-EEA AIF</i>	Chapters 1, 3 and 10
<i>small authorised UK AIFM of an unauthorised AIF</i>	Chapter 1
<i>small authorised UK AIFM of an authorised AIF</i>	Chapter 1
<i>incoming EEA AIFM branch of a UK AIF</i>	Chapters 1, 3 and 10
<i>depository of an AIF managed by a full-scope UK AIFM</i>	Chapters 1 and 3
<i>depository of a UK ELTIF managed by a full-scope UK AIFM</i>	Chapters 1, 3 and 4.2
<i>depository of a UK ELTIF managed by a full-scope EEA AIFM</i>	Chapters 1, 3 and 4.2

(2) A residual CIS operator is not subject to the requirements in FUND.

(3) ■ FUND 10 will apply to a UK AIFM or incoming EEA AIFM which intends to passport or market on a cross-border basis.

Compatibility with European law

1.1.2

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Handbook rules which conflict with either a rule which transposes AIFMD or a provision in the AIFMD level 2 regulation are modified to the extent necessary to be compatible with European law.

Interaction between FUND and COLL

1.1.3

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A full-scope UK AIFM of an authorised AIF is subject to the requirements in FUND and COLL. The effect of ■ FUND 1.1.2 R is that if a rule in COLL which applies to a UK AIFM, an ICVC that is an AIF, or a UK depositary of an AIF conflicts with either a rule in FUND transposing AIFMD or the AIFMD level 2 regulation, the COLL rule is modified to the extent necessary to be compatible with the FUND rule or the AIFMD level 2 regulation.

1.2 Structure of the Investment Funds sourcebook

Structure of the Investment Funds sourcebook

1.2.1

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FUND is structured as follows:

- (1) ■ **FUND 1** sets out the broad application of *FUND* and describes the types of *fund* manager to whom *FUND* applies.
- (2) [deleted]
- (3) ■ **FUND 3** sets out the baseline requirements that apply to all *full-scope UK AIFM*.
- (4) ■ **FUND 4** sets out some requirements in relation to European AIF regimes.
- (10) ■ **FUND 10** sets out the requirements that apply to an *AIFM* that operates on a cross-border basis.



1.3 Types of fund manager

Types of fund manager within the scope of European legislation

- 1.3.1 **G** The UK regulatory regime provides that an *undertaking* which manages an AIF or UCITS in the UK and is within the scope of AIFMD or the UCITS Directive must fall into one or both of the following categories:
- (1) an AIFM; or
 - (2) a UCITS management company.

Types of fund manager outside the scope of European legislation

- 1.3.2 **G** An *authorised person* that operates a *collective investment scheme* in the UK and falls entirely outside the scope of AIFMD or the UCITS Directive will be a *residual CIS operator*.

AIFMs

- 1.3.3 **G** An AIFM with a *Part 4A permission of managing an AIF* will be a *UK AIFM* and must fall into at least one of the following categories:
- (1) a *full-scope UK AIFM*;
 - (2) a *small authorised UK AIFM* of an *authorised AIF*; and
 - (3) a *small authorised UK AIFM* of an *unauthorised AIF*.

Full-scope UK AIFM

- 1.3.4 **G**
- (1) A *full-scope UK AIFM* is a *UK AIFM* which is authorised in accordance with AIFMD and, therefore, subject to its full requirements.
 - (2) A *full-scope UK AIFM* must be either:
 - (a) an *external AIFM*; or
 - (b) an *internally managed AIF*.
 - (3) PERG 16, question 3.6 provides guidance on where an AIFM is acting as an *external AIFM* or an *internally managed AIF*.
 - (4) A *full-scope UK AIFM* is permitted under ■ FUND 1.4.3 R (3) to ■ FUND 1.4.3 R (6) to provide certain additional services. Where it

carries on those services it is also an *AIFM investment firm* and subject to additional requirements for those services.

Small AIFM

1.3.5

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- (1) *AIFMD* provides that an *AIFM* which has assets under management below certain thresholds (a "*small AIFM*") may be subject to limited requirements under *AIFMD*. However, this is subject to the right of *EEA States* to impose stricter requirements.
- (2) In the *UK*, the regulatory regime provides that a *small AIFM* with a registered office in the *UK* may be either:
 - (a) a *small authorised UK AIFM*; or
 - (b) a *small registered UK AIFM*.

Small authorised UK AIFM

1.3.6

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- (1) A *small authorised UK AIFM* will be carrying on the *regulated activity of managing an AIF* and will be subject to *FCA rules* in respect of that activity. The application of *FCA rules* to a *small authorised UK AIFM* will depend on whether it manages an *authorised AIF* or an *unauthorised AIF*. A *small authorised UK AIFM* which manages an *authorised AIF* will be subject to the requirements in *COLL*, but a *small authorised UK AIFM* of an *unauthorised AIF* will not be subject to *COLL*.
- (2) A *small authorised UK AIFM* may also opt in to the full requirements in *AIFMD*, in which case it will become a *full-scope UK AIFM*.

Small registered UK AIFM

1.3.7

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A *small registered UK AIFM* will not be carrying on a *regulated activity* in respect of its activities as an *AIFM* for an *AIF* for which it is entitled to be registered. Regulation 10 of the *AIFMD UK regulation* provides for three categories of *small registered UK AIFM*:

- (1) to fall within the first category the *AIFM* must:
 - (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*;
 - (c) be an *internally managed AIF* of an *AIF* which is a *body corporate* and is not a *collective investment scheme*; and
 - (d) not be an *external AIFM*.
- (2) to fall within the second category the *AIFM* must:
 - (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*; and
 - (c) only manage *AIFs* which:
 - (i) are *collective investment schemes*;
 - (ii) are not authorised *AIFs*;

- (iii) holds the majority of their assets as land, directly or indirectly, through an entity which also meets the conditions in (ii) to (iv) of this sub-paragraph (but this condition does not apply during the first 180 days and the last 180 days of the period during which the undertaking is an *AIF*);
 - (iv) do not hold any *specified investments* other than:
 - (aa) *contracts of insurance* which relate to land held by the *AIF*; and
 - (bb) *shares* through which the *AIF* holds land; and
 - (v) are operated, or will be established and operated, by a *person* with a *Part 4A permission* to carry on the regulated activity of *establishing, operating or winding up a collective investment scheme*.
- (3) to fall within the third category the *AIFM* must:
- (a) have a registered office in the *UK*;
 - (b) be a *small AIFM*; and
 - (c) have applied for registration as a *EuSEF manager* or *EuVECA manager* and meet the conditions for such registration.

1.3.8

G Under regulation 16 of the *AIFMD UK regulation* a *small registered UK AIFM* may apply to the *FCA* for a *Part 4A permission* to manage an *AIF*. In its application a *small registered UK AIFM* may apply to become:

- (1) a *small authorised UK AIFM*; or
- (2) a *full-scope UK AIFM*, in accordance with article 3(4) of *AIFMD*.

1.4 AIFM business restrictions

Single AIFM

1.4.1

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A *full-scope UK AIFM* must ensure that for each *AIF* it is appointed to manage, it is the only *AIFM* of that *AIF*, and is responsible for ensuring compliance with *AIFMD*.

[Note: article 5(1) of *AIFMD*]

Internally managed AIFs

1.4.2

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An *internally managed AIF* which is a *full-scope UK AIFM* must not engage in any activities other than *AIFM management functions* in respect of that *AIF*.

[Note: article 6(3) of *AIFMD*]

External AIFMs

1.4.3

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An *external AIFM* that is a *full-scope UK AIFM* must not engage in any activities other than:

- (1) *AIFM management functions*;
- (2) the management of *UCITS*, for which it is subject to authorisation under the *UCITS Directive*;
- (3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for pension funds and institutions for occupation retirement provisions in accordance with article 19(1) of Directive 2003/41/EC;
- (4) investment advice;
- (5) safe-keeping and administration in relation to shares or units of collective investment undertakings; and
- (6) reception and transmission of orders in relation to *financial instruments*.

[Note: article 6(2) and (4) of *AIFMD*]

- 1.4.4** **R** An external AIFM that is a full-scope UK AIFM must not provide:
- (1) only the services in ■ FUND 1.4.3 R (3) to ■ FUND 1.4.3 R (6); or
 - (2) only the services in ■ FUND 1.4.3 R (4) to ■ FUND 1.4.3 R (6) without also having been authorised to provide the services in ■ FUND 1.4.3 R (3); or
 - (3) only the AIFM management functions in point 2 of Annex I of AIFMD; or
 - (4) the AIFM investment management function in point 1(a) (portfolio management) of Annex I of AIFMD without also providing the AIFM investment management functions in point 1(b) (risk management) of Annex I of AIFMD or vice versa.

- 1.4.5** **G** Where a full-scope UK AIFM carries on the activities in ■ FUND 1.4.3R (3) and ■ (4) in relation to assets which are not *financial instruments* and it is not carrying on the activities of *managing investments* or *advising on investments*, the FCA will deem the firm as having been authorised to carry on such activities by virtue of its authorisation as an AIFM. However, for such an AIFM to be able to carry on the activity in ■ FUND 1.4.3R (4) in relation to assets which are *financial instruments* or the activities in ■ FUND 1.4.3R (5) and ■ (6) it must have a Part 4A permission to manage investments.

- 1.4.6** **G** In the FCA's view an AIFM is permitted under ■ FUND 1.4.3 R to carry out AIFM management functions for a collective investment undertaking the management of which falls outside the scope of AIFMD or the UCITS Directive.

AIFM management functions

- 1.4.7** **G** AIFM management functions are set out in Annex I of AIFMD as follows:
- (1) the AIFM investment management functions of:
 - (a) portfolio management; and
 - (b) risk management; and
 - (2) other functions that an AIFM may additionally perform in the course of the collective management of an AIF:
 - (a) administration:
 - (i) legal and fund management accounting services;
 - (ii) customer enquiries;
 - (iii) valuation and pricing (including tax returns);
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of *unit/share* holder register;
 - (vi) distribution of income;
 - (vii) *unit* issues and redemptions;
 - (viii) contract settlements (including certificate dispatch); and
 - (ix) record keeping;

- (b) *marketing*; and
- (c) activities related to the assets of *AIFs*, namely:
 - (i) services necessary to meet the fiduciary duties of the *AIFM*;
 - (ii) facilities management;
 - (iii) real estate administration activities;
 - (iv) advice to *undertakings* on capital structure, industrial strategy and related matters;
 - (v) advice and services relating to mergers and the purchase of *undertakings*; and
 - (vi) other services connected to the management of the *AIF* and the companies and other assets in which it has invested.

[Note: Annex I of *AIFMD*]