

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]



**10.2 AIFM management passport
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**10.3 AIFM marketing passport
AIFM marketing passport [deleted]**

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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*.

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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

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- (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

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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

market an AIF in the UK managed by it by submitting a notification to the FCA in the form set out in ■ FUND 10 Annex 1 D.

10.5.7 **G** To allow the AIFM to comply with the requirements of regulation 58(2), the notification includes a statement from the AIFM confirming that the following conditions are met:

- (1) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF (as explained in ■ FUND 10.5.8 G); and
- (2) the AIFM is a *small non-UK AIFM*.

10.5.8 **G** As a result of marketing an AIF in the UK, a *small non-UK AIFM* is required to provide the FCA with information on:

- (1) the main instruments in which the AIFM trades; and
- (2) the principal exposures and most important concentrations of the AIFs it manages.
in accordance with SUP 16.18 (AIFMD reporting).

Marketing of AIFs managed by other third-country AIFMs

10.5.9 **G** In accordance with regulation 59 of the AIFMD UK regulation, an *above-threshold non-UK AIFM* may market a UK AIF or a non-UK AIF in the UK managed by it by submitting a notification to the FCA in the form in ■ FUND 10 Annex 1 D.

10.5.10 **G** To allow the AIFM to comply with the requirements of regulation 59(2), the notification includes a statement from the AIFM confirming that the following conditions are met:

- (1) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF (see ■ FUND 10.5.11 G);
- (2) the AIFM complies with the requirements of ■ FUND 3.2 (Investor information), 3.3 (Annual report of an AIF), and 3.4 (Reporting obligations to the FCA) in so far as such provisions are relevant to the AIFM and the AIF to be marketed;
- (3) if applicable, the AIFM complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the AIFMD UK regulation in relation to the AIF to be marketed;
- (4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:
 - (a) the FCA and, if applicable, the *competent authorities* of the other country where the AIF is established; and

(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*.

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>

