


Chapter 10

Operating on a cross-border basis

		<div>10.1Application and purpose</div>
		<div>Application</div>
10.1.1	G	<div><div><div>(1) This chapter applies to the following types of <i>firm</i> in relation to the activities in (2):<div><div>(a) a <i>full-scope UK AIFM</i>;</div><div>(b) [deleted]</div><div>(c) a <i>small non-UK AIFM</i>; and</div><div>(d) an <i>above-threshold non-UK AIFM</i>.</div></div></div><div>(2) The activities to which this chapter relates are the management and <i>marketing</i> on a cross-border basis, into or from the <i>UK</i> of:<div><div>(a) a <i>UK AIF</i>; and</div><div>(b) a <i>non-UK AIF</i>.</div><div>(c) [deleted]</div></div></div></div></div>
		<div>Purpose</div>
10.1.2	G	<div>The purpose of this chapter is to provide <i>guidance</i> on the requirements that apply to the types of <i>firm</i> set out in ■ FUND 10.1.1 G when operating on a cross-border basis into or from the <i>UK</i>.</div>
		<div>Introduction</div>
10.1.3	G	<div>[deleted]</div>
10.1.4	G	<div>[deleted]</div>
10.1.5	G	<div><div><div>(1) There are specific provisions for third country <i>AIFs</i> and <i>AIFMs</i> (ie, in relation to <i>non-UK AIFs</i> and <i>non-UK AIFMs</i>) and the <i>marketing</i> of a <i>UK AIF</i> or a <i>non-UK AIF</i> that is a <i>feeder AIF</i>, the <i>master AIF</i> of which is managed by a <i>non-UK AIFM</i> or is a <i>non-UK AIF</i>.</div><div>(2) A <i>UK AIFM</i> is allowed to manage a <i>non-UK AIF</i> from the <i>UK</i>.</div><div>(3) In addition, the <i>UK</i> allows the <i>marketing</i> by the following types of <i>AIFM</i> in the <i>UK</i>:<div><div>(a) a <i>full-scope UK AIFM</i> of:</div></div></div></div></div>

- (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 [deleted]
[deleted]	



10.3 AIFM marketing passportAIFM marketing passport [deleted]

[deleted]



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

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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

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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

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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*.

10.5.4

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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

10.5.6

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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

		<p><i>market</i> an <i>AIF</i> in the <i>UK</i> managed by it by submitting a notification to the <i>FCA</i> in the form set out in ■ FUND 10 Annex 1 D.</p>
10.5.7	G	<p>To allow the <i>AIFM</i> to comply with the requirements of regulation 58(2), the notification includes a statement from the <i>AIFM</i> confirming that the following conditions are met:</p> <ul style="list-style-type: none"> (1) the <i>AIFM</i> is the person responsible for complying with the implementing provisions relating to the <i>marketing</i> of the <i>AIF</i> (as explained in ■ FUND 10.5.8 G); and (2) the <i>AIFM</i> is a <i>small non-UK AIFM</i>.
10.5.8	G	<p>As a result of <i>marketing</i> an <i>AIF</i> in the <i>UK</i>, a <i>small non-UK AIFM</i> is required to provide the <i>FCA</i> with information on:</p> <ul style="list-style-type: none"> (1) the main instruments in which the <i>AIFM</i> trades; and (2) the principal exposures and most important concentrations of the <i>AIFs</i> it manages. <p>in accordance with SUP 16.18 (AIFMD reporting).</p>
		<p>Marketing of AIFs managed by other third-country AIFMs</p>
10.5.9	G	<p>In accordance with regulation 59 of the <i>AIFMD UK regulation</i>, an <i>above-threshold non-UK AIFM</i> may <i>market</i> a <i>UK AIF</i> or a <i>non-UK AIF</i> in the <i>UK</i> managed by it by submitting a notification to the <i>FCA</i> in the form in ■ FUND 10 Annex 1 D.</p>
10.5.10	G	<p>To allow the <i>AIFM</i> to comply with the requirements of regulation 59(2), the notification includes a statement from the <i>AIFM</i> confirming that the following conditions are met:</p> <ul style="list-style-type: none"> (1) the <i>AIFM</i> is the person responsible for complying with the implementing provisions relating to the <i>marketing</i> of the <i>AIF</i> (see ■ FUND 10.5.11 G); (2) the <i>AIFM</i> complies with the requirements of ■ FUND 3.2 (Investor information), 3.3 (Annual report of an AIF), and 3.4 (Reporting obligations to the <i>FCA</i>) in so far as such provisions are relevant to the <i>AIFM</i> and the <i>AIF</i> to be <i>marketed</i>; (3) if applicable, the <i>AIFM</i> complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the <i>AIFMD UK regulation</i> in relation to the <i>AIF</i> to be <i>marketed</i>; (4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between: <ul style="list-style-type: none"> (a) the <i>FCA</i> and, if applicable, the <i>competent authorities</i> of the other country where the <i>AIF</i> is <i>established</i>; 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

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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

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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

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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*.
- 10
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FUND 10/11

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>

