

## Chapter 4

# Specialist AIF Regimes

## 4.1 Application

### 4.1.1

**G** The application of this chapter is summarised in the following table; the detailed application is provided in each section.

| Type of firm                            | Applicable sections |
|---|---------------------|
| <i>Full-scope UK AIFM of a an LTIF.</i> | FUND 4.2 (LTIFs)    |
| <i>UK depositary of an LTIF.</i>        | FUND 4.2 (LTIFs)    |

## 4.2 LTIFs

### Application

4.2.1

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This section applies to:

- (1) a *full-scope UK AIFM* of an *LTIF*; and
- (2) a *UK depositary* of an *LTIF*.

### The LTIF regulation

4.2.2

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- (1) The *LTIF regulation* lays down uniform rules on the authorisation, investment policies and operating conditions of *UK AIFs*, or compartments of those *AIFs*, that are *marketed* in the *UK* as long-term investment funds (*LTIFs*).
- (2) [deleted]

### Interaction between the LTIF regulation and the UK AIFM regime

4.2.3

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- (1) To be eligible to manage an *LTIF*, an *AIFM* needs to be a *full-scope UK AIFM*.
- (2) This means that the *AIFM* and the *depositary* of an *LTIF* need to comply with the applicable requirements of:
  - (a) the *UK AIFM regime*; and
  - (b) the *LTIF regulation*.

### Specific depositary provisions where an LTIF is marketed to retail investors

4.2.4

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- (1) Article 29 of the *LTIF regulation* contains specific provisions concerning the *depositary* of an *LTIF* that is *marketed to retail clients* which have the effect of amending the corresponding provisions which implemented *AIFMD* in the *United Kingdom*.
- (2) Article 29 of the *LTIF regulation* is replicated in ■ FUND 4.2.5UK.
- (3) These specific provisions and the corresponding references in *AIFMD* (as implemented before *IP completion day*), as well as the relevant provisions in the *AIFMD UK regulation and rules* are summarised in ■ FUND 4.2.6G.

(4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disappplied in ■ FUND 4.2.7R.

4.2.5

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Specific provisions concerning the depositary of an ELTIF marketed to retail investors

1. Notwithstanding the provisions in [FUND 3.11.10R], the depositary of an LTIF marketed to retail investors must be an entity that satisfies the criteria referred to in [COLL 6.6A.8R(1) to (3)].
- 1A. The requirements of section 243(5) and (5A) and 261D(5) of FSMA and regulation 15(8)(a) of the Open-Ended Investment Companies Regulations 2001(11), as amended from time to time, do not apply to a qualifying EEA firm until the end of the period determined in accordance with regulation 17 (period during which regulation 8 or 11 is to apply) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018
- 1B. In paragraph 1A ‘qualifying EEA firm’ means a body corporate which:
  - (a) is the depositary of an LTIF;
  - (b) is, by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, treated as having a Part 4A permission relating to one or more regulated activity; and
  - (c) had immediately before IP completion day, and continues to have, a Part 4A permission to carry on the regulated activity specified in Article 51ZD of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
2. Notwithstanding regulations 30 and 32 of the AIFM Regulations, the depositary of an LTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3. The liability of the depositary referred to in regulation 30 of the AIFM Regulations shall not be excluded or limited by agreement where the LTIF is marketed to retail investors.
4. Any agreement that contravenes paragraph 3 shall be void.
5. The assets held in custody by the depositary of an LTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Re-use comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.
 

The assets held in custody by the depositary of an LTIF are only allowed to be reused provided that:

  - (a) the reuse of the assets is executed for the account of the LTIF;
  - (b) the depositary is carrying out the instructions of the manager of the LTIF on behalf of the LTIF;
  - (c) the reuse is for the benefit of the LTIF and in the interests of the unit- or shareholders; and
  - (d) the transaction is covered by high quality and liquid collateral received by the LTIF under a title transfer arrangement.

Specific provisions concerning the depositary of an ELTIF marketed to retail investors

The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

[Note: article 29 of the *LTIF regulation*]

Summary of specific provisions concerning the depositary of an LTIF marketed to retail investors

4.2.6

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|     | LTIF regulation                              | AIFMD reference   | Relevant provisions in AIFMD UK regulation and FCA rules                      |
|-----|--|---|---|
| (1) | Article 29(1) of the <i>LTIF regulation</i>  | Article 21(3) of <i>AIFMD</i>                                 | FUND 3.11.10R to FUND 3.11.15G  |
| (2) | Article 29(2) of the <i>LTIF regulation</i>  | Second paragraph of article 21(13) and 21(14) of <i>AIFMD</i> | Regulations 30(4) and (5) and 32 of the <i>AIFMD UK regulation</i> (Note 1)   |
| (3) | Article 29(3) of the <i>LTIF regulation</i>  | Article 21(12) of <i>AIFMD</i>                                | Regulations 30(1) to (3) and 31(1) of the <i>AIFMD UK regulation</i> (Note 2) |
| (4) | Article 29(5) of the <i>ELTIF regulation</i> | Article 21(10) third paragraph of <i>AIFMD</i>                | FUND 3.11.24R   |

**Note 1:** Regulations 30(4) and 32 do not apply to the *depositary* of a *UK LTIF* which is marketed to retail investors under Chapter V of the *LTIF regulation*. This follows from regulations 30(7) and 32(3) of the *AIFMD UK regulation* which were amended by The European Long-term Investment Funds Regulations 2015 (SI 2015/1882) and The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 (SI 2019/328).

**Note 2:** No modifications are needed to these provisions as the liability of the *depositary* referred to in article 21(12) of *AIFMD* is unaffected by the *LTIF regulation*.

Disapplication of FUND depositary provisions for an LTIF marketed to retail investors

4.2.7

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The following provisions do not apply when an *LTIF* is marketed to a *retail client*:

- (1) ■ FUND 3.11.10R to ■ FUND 3.11.15G (Eligible depositaries for UK AIFs); and
- (2) [deleted]
- (3) ■ FUND 3.11.24R (Reuse of assets).

**Documentation and information required to market an LTIF**

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- (1) To market an *LTIF* an *AIFM* is required to:
  - (a) notify the *FCA* in accordance with regulation 54 of the *AIFMD UK regulation*, if it wishes to market the *LTIF* in the *UK* (see article 31(1) of the *LTIF regulation*); and
  - (b) [deleted]
  - (c) provide the following additional documentation and information to the *FCA* (see article 31(4) of the *LTIF regulation*):
    - (i) the prospectus of the *LTIF*;
    - (ii) the key information document of the *LTIF* in the event that it is marketed to retail clients; and
    - (iii) information on the facilities referred to in article 26 of the *LTIF regulation*.
- (2) To market an *LTIF*, a full-scope *UK AIFM* should submit a notice to the *FCA* using the forms in:
  - (a) ■ FUND 3 Annex 1D (Notification of intention to market an AIF in the United Kingdom) to market an *LTIF* in the *United Kingdom*; and
  - (b) [deleted]
  - (c) ■ FUND 4 Annex 1R (Additional documentation and information to market an *LTIF*) (as required by ■ FUND 4.2.9R).

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The *AIFM* of an *ELTIF* must submit a notice to the *FCA* using the form in ■ FUND 4 Annex 1R (Additional documentation and information to market an *ELTIF*) to market the *ELTIF*.

**Interaction between ELTIFs and authorised funds**

4.2.10

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- (1) The requirements in relation to an *LTIF* are set out in the *LTIF regulation* rather than in *FCA rules*.
- (2) (a) As a result, the *Glossary* term of an *authorised fund* has only limited application to an *LTIF*.
  - (b) This is to avoid all the requirements for an *authorised AIF* applying to an *AIFM* or *depository* of an *LTIF*.
- (3) (a) The *Glossary* term of an *authorised fund* only applies to an *LTIF* (other than a *body corporate* that is not a *collective investment scheme*) in ■ FEES 6 and *COMP*.
  - (b) This is to allow the *rules and guidance* in ■ FEES 6 and *COMP* to apply to an *LTIF* (other than a *body corporate* that is not a *collective investment scheme*) in the same way as other types of *fund* that are authorised by the *FCA*.

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- (1) However, a full-scope *UK AIFM* of an *LTIF* needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.

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- (2) Similarly, the *depository* of a an *LTIF* needs to obtain the *permission* of *acting as trustee or a depository of an AIF* that is an *authorised AIF*.
  - (3) (a) Where the requirements for an *AIFM* or a *depository* of an *LTIF* are concerned, an *LTIF* bears more of a resemblance to an *authorised AIF* than an *unauthorised AIF*.
    - (b) As a result, *firms* that do not have the *permission* to *manage an AIF* that is an *authorised AIF* or *act as a trustee or depository of an AIF* that is an *authorised AIF* will need to vary their *permission* to be able to act as the *AIFM* or *depository* of an *LTIF*.





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## Additional documentation and information to market an LTIF

This annex consists only of one or more forms. Forms are to be found through the following address: -  
FUND 4 Annex 1R

