

Chapter 16

Scope of the Alternative Investment Fund Managers Regime

16.8 Territorial scope

G Question 8.1: What is the territorial scope of the AIFMD regulated activities?

■ PERG 2.4 (Link between activities and the United Kingdom) describes the general principles.

Section 418 of the Act (Carrying on regulated activities in the United Kingdom) describes the circumstances in which an activity is treated as carried on in the UK in circumstances in which it would not otherwise be, as described by ■ PERG 2.4.3 G.

Leaving aside section 418, generally speaking the activities of *managing an AIF* and acting as a depositary of an AIF are carried on where the place of business of the AIFM or depositary from which those activities are carried out is located.

If one of these activities is carried on from a number of locations, some in the UK and some not, the activity is treated as being carried on in the UK if there is some continuity or regularity of provision within the UK of activities which are a significant part of the activity of *managing an AIF* or acting as a depositary of an AIF.

Question 8.2: Are the additional activities described in the answer to Question 3.3 relevant?

Yes. When deciding whether a company is *managing an AIF* in the UK if it splits the work between an office in the UK and one outside, one should take into account any of the additional activities described in the answer to Question 3.3 (Are the activities mentioned in the answer to Question 3.1 the only activities included in managing an AIF?) if the manager is performing risk management or portfolio management, even if all the risk management and portfolio management is carried on outside the UK.

Question 8.3: Can the AIF activities be carried on by an overseas firm?

As explained in the answer to Question 6.1 (What exclusions from the regulated activities specific to AIFs are there?), the *regulated activity* of *managing an AIF* does not apply to an AIFM whose registered office is not in the United Kingdom. Regulation 81 of the AIFMD UK Regulation restricts the scope of this exclusion from the date that HM Treasury brings in certain further legislation relating to non-UK AIFs and AIFMs.

The *regulated activity* of acting as a depositary of an AIF can apply to a person whose registered or head office is outside the UK.

Question 8.4: Is the material in PERG 16.3 about delegation of management functions from one firm to another relevant to delegation from one branch to another?

This question is about the branch in one country of an undertaking being appointed as an *AIFM* and then delegating some or all of its tasks to another branch of the same undertaking. The question is whether any of the material in ■ PERG 16.3 about the effect of delegation on who *manages an AIF* is relevant to whether that undertaking is carrying on those activities in the *UK* if one of those branches is in the *UK* and the other is not.

The answer is that it is not relevant. The two branches are part of the same legal entity. The relevant factors are the ones in the answer to Question 8.1 (What is the territorial scope of the AIFMD regulated activities?).