Chapter 13

Exercise of passport rights by UK firms
13.1 Application and purpose

Application

13.1.1 This chapter applies to a UK firm, that is, a person whose head office is in the United Kingdom and which is entitled to carry on an activity in another EEA State subject to the conditions of a Single Market Directive. Such an entitlement is referred to in the Act as an EEA right and its exercise is referred to in the Handbook as passporting.

13.1.2 This chapter also applies to a UK firm which wishes to establish a branch in, or provide cross border services into, Gibraltar. The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 provides that a UK firm is to be treated as having an entitlement corresponding to its EEA right, to establish a branch in, or provide cross border services into, Gibraltar under any of the Single Market Directives. So, references in this chapter to an EEA State or an EEA right include references to Gibraltar and the entitlement under the Gibraltar Order respectively.

13.1.3 This chapter does not apply to:

(1) a firm established in an EEA State other than the United Kingdom; passporting by such a firm in or into the United Kingdom is a matter for its Home State regulator although guidance is given in SUP 13A (Qualifying for authorisation under the Act);

(2) other overseas firms (that is, overseas firms established outside the EEA); such firms are not entitled to passport into another EEA State and, where relevant, may need to obtain authorisation in each EEA State in which they carry on business;

(3) any insurance activity by way of provision of services which is provided by an EEA firm participating in a community co-insurance operation otherwise than as leading insurer; article 190(2) of the Solvency II Directive provides that only the leading insurer in such an operation is required to complete any passporting formalities (see also article 11 of the Regulated Activities Order); or

(4) the marketing of the units of a UCITS scheme by its management company in another EEA State under the UCITS Directive (see paragraph 20B of Part III of Schedule 3 to the Act and COLL 12.4 (UCITS product passport)).
13.1.3A **G** Other than the notification requirements in ■ SUP 13.5.1AA R and ■ SUP 13.5.2-A R and the related guidance in ■ SUP 13.5.1B G, ■ SUP 13.5.2A G and ■ SUP 13.5.7 G, this chapter does not apply to a **UK firm** in relation to its exercise of an **EEA right** under the **auction regulation** to provide services or establish a branch in another **EEA state**. This is because a **UK firm** is not subject to the requirements in **Schedule 3** to the **Act** in respect of its exercise of that **EEA right**.

13.1.4 **G** ■ SUP App 3 contains **guidance** on the **Single Market Directives**.

**Purpose**

13.1.5 **G** This chapter gives **guidance** on **Schedule 3** to the **Act** for a **UK firm** which wishes to exercise its **EEA right** and establish a **branch** in, or provide **cross border services** into, another **EEA State**. That is, when a **UK firm** wishes to establish its first **branch** in, or provide **cross border services** for the first time into, a particular **EEA State**.

13.1.6 **G** The chapter also explains how a **UK firm** which has already established a **branch** in, or is providing **cross border services** into, another **EEA State**, may change the details of its **branch** or of the **cross border services** it is providing: for example, where a **UK firm** wishes to establish additional **branches** in an **EEA State** in which it has already established a **branch** where this would result in a change to the details provided previously. Such changes are governed by the **EEA Passport Rights Regulations** and, where **MiFID** applies, **MiFID RTS 3A** and **MiFID ITS 4A**.
13.2 Introduction

13.2.1 This chapter gives guidance to UK firms. In most cases UK firms will be authorised persons under the Act. However, under the CRD, a subsidiary of a firm which is a credit institution meets the criteria set out in that Directive also has an EEA right. Such an unauthorised subsidiary is known as a financial institution. References in this chapter to a UK firm include a financial institution. The chapter does not provide guidance for Solvency II firms. Solvency II firms should consult the relevant parts of the PRA Rulebook and the PRA website at: [http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx](http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx) as the PRA is the appropriate UK regulator for Solvency II firms.

13.2.2 A UK firm should be aware that the guidance is the FCA’s interpretation of the Single Market Directives, the Act and the legislation made under the Act. The guidance is not exhaustive and is not a substitute for firms consulting the legislation or taking their own legal advice in the United Kingdom and in the relevant EEA States.

13.2.3 In some circumstances, a UK firm that is carrying on business which is outside the scope of the Single Market Directives has a right under the Treaty to carry on that business.

13.2.4 In SUP 13 the "appropriate UK regulator" amounts to whichever of the FCA and the PRA is the competent authority for authorising the relevant UK firm.

13.2.5 A UK firm that is an AIFM will only be entitled to carry on an activity under AIFMD under a passport in another EEA State if it is a full-scope UK AIFM.

13.2.6 As set out in article 32(1) of the MCD, a UK firm will only be able to carry on MCD credit intermediation activity in relation to an MCD credit agreement offered by a non-credit institution in an EEA state if that EEA state permits non-credit institutions to offer MCD credit agreements.
13.3 Establishing a branch in another EEA State

What constitutes a branch

13.3.1 Guidance on what constitutes a branch is given in SUP App 3.

(2) (a) Where a UK MiFID investment firm is seeking to use a tied agent established in another EEA State in which a branch is already established, the tied agent will be assimilated into the branch.

(b) If a UK MiFID investment firm is seeking to use a tied agent established in another EEA State in which no branch is already established, the rules in SUP 13 will apply as if that firm were seeking to establish a branch in that EEA State (paragraph 20A of Schedule 3 to the Act).

(c) In any event, the appointment of a tied agent established in another EEA State leads to the application of conduct requirements to the tied agent’s business, as if it were a branch of a UK MiFID investment firm.

(d) See SUP 13.3.9G for details of the MiFID branch forms.

[Note: article 35(2) of MiFID]

The conditions for establishing a branch

A UK firm cannot establish a branch in another EEA State for the first time under an EEA right unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a UK firm which is not an authorised person to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:

(1) the UK firm has given the appropriate UK regulator, in accordance with the appropriate UK regulator’s rules (see SUP 13.5.1 R) or the directly applicable regulations made under the CRD (see SUP 13.5.1 R), notice of its intention to establish a branch (known as a notice of intention) which:

(a) identifies the activities which it seeks to carry on through the branch; and

(b) includes such other information as may be specified by the appropriate UK regulator (see SUP 13.5.1 R) or by the directly applicable regulations made under the CRD (see SUP 13.5.1 R);

(2) the appropriate UK regulator has given notice (known as a consent notice) to the Host State regulator;
(2A) if the UK firm’s EEA right relates to providing collective portfolio management services under the UCITS Directive, the FCA has provided to the Host State regulator:

(a) confirmation that the firm has been authorised as a management company under the provisions of the UCITS Directive;

(b) a description of the scope of the firm’s authorisation; and

(c) details of any restriction on the types of EEA UCITS scheme that the firm is authorised to manage; and

(3) (a) if the UK firm’s EEA right derives from the MCD, one month has elapsed beginning on the date on which the UK firm received notice that the appropriate UK regulator had given a consent notice as described in SUP 13.3.6 G (1);

(aa) if the UK firm’s EEA right derives from the IDD, either:

(i) the Host State regulator has notified the appropriate UK regulator of the applicable provisions; or

(ii) one month has elapsed beginning with the date on which the appropriate UK regulator gave the consent notice as described in SUP 13.3.5G(2);

(b) in any other case (except for a firm passporting under AIFMD):

(i) the Host State regulator has notified the UK firm of the applicable provisions or, in the case of a UK firm passporting under MiFID or the UCITS Directive, that the branch may be established; or

(ii) two months have elapsed beginning with the date on which the appropriate UK regulator gave the consent notice.

An appointed representative appointed by a firm to carry on insurance distribution activity on its behalf may establish a branch in another EEA State under the IDD. In this case, the notice of intention in SUP 13.3.2 G (1) should be given to the appropriate UK regulator by the firm on behalf of the appointed representative.

An exempt professional firm which is included in the record of unauthorised persons carrying on insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order may establish a branch in another EEA State under the IDD (see PROF 7.2).

A tied agent appointed by a MiFID investment firm to carry on investment services and activities (and ancillary services where relevant) does not have its own passporting right to establish a branch in another EEA State. However, a
MiFID investment firm remains free to appoint a tied agent to do business in another EEA State and where it does so, the tied agent will benefit from its passport.

If a UK firm is passporting under AIFMD, it may establish a branch in another EEA State as soon as the conditions in SUP 13.3.2 G (1) and SUP 13.3.2 G (2) are met.

Issue of a consent notice to the Host State regulator

(1) If the UK firm’s EEA right derives from the CRD or MiFID, the appropriate UK regulator will give the Host State regulator a consent notice within three months unless it has reason to doubt the adequacy of a UK firm’s resources or its administrative structure. The Host State regulator then has a further two months to notify the applicable provisions (if any) and prepare for the supervision, as appropriate, of the UK firm, or in the case of a MiFID investment firm, to inform the UK firm that a branch can be established.

(1A) If the UK firm’s EEA right derives from the UCITS Directive, the FCA will give the Host State regulator a consent notice within two months unless it has reason to doubt the adequacy of the UK firm’s resources or its administrative structure. The Host State regulator then has a further two months to prepare for the supervision of the UK firm.

(1B) Where the UK firm’s EEA right derives from AIFMD, the FCA will give the Host State regulator a consent notice within two months of having received the notice of intention and immediately inform the UK firm pursuant to SUP 13.3.6 G (1) if the FCA is satisfied that the firm complies, and continues to comply with:

(a) the provisions implementing the AIFMD; and

(b) any directly applicable EU regulation made under that directive.

(2) If the UK firm’s EEA right derives from the IDD, the appropriate UK regulator will give the Host State regulator a consent notice within one month of the date on which it received the UK firm’s notice of intention unless it has reason to doubt the adequacy of the UK firm’s resources or its administrative structure. The Host State regulator then has a further one month to notify the applicable provisions.

(3) If the UK firm’s EEA right derives from the MCD, the FCA will give the Host State regulator a consent notice within one month of the date on which it received the UK firm’s notice of intention. The Host State regulator then has a further two months to prepare for the supervision of the UK firm.

Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give a consent notice, except where paragraph
19(7A) of Part III of Schedule 3 to the Act applies. Where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.

13.3.6 G

(1) Save where (1A) applies, if the appropriate UK regulator gives a consent notice, it will inform the UK firm in writing that it has done so.

(1A) If the UK firm’s EEA right derives from the IDD, where the appropriate UK regulator has given a consent notice and the Host State regulator has acknowledged receipt of that notice, the appropriate UK regulator must give written notice to the UK firm concerned that the Host State regulator has received the consent notice.

(2) The consent notice will contain, among other matters, the requisite details (see SUP 13 Annex 1) provided by the UK firm in its notice of intention (see SUP 13.5 (Notices of intention)).

(3) Where a consent notice is given under the UCITS Directive, the FCA will at the same time:
   (a) communicate to the Host State regulator details of the compensation scheme intended to protect investors; and
   (b) enclose the information described at SUP 13.3.2 G (2A).

(4) Where a consent notice is given under the AIFMD it must include confirmation that the UK firm has been authorised by the FCA under AIFMD.

(5) Where a consent notice is given under the MCD in relation to a tied MCD credit intermediary, it will include details of:
   (a) any MCD creditor or group to which it is tied; and
   (b) whether the MCD creditor or group take full and unconditional responsibility for the tied MCD credit intermediary’s activities.

(6) Where a consent notice is given under the IDD, it will include the following information:
   (a) the name, address and, where applicable, the registration number of the insurance intermediary;
   (b) the EEA State within the territory of which the insurance intermediary plans to establish a branch;
   (c) the category of insurance intermediary and, if applicable, the name of the insurer represented;
   (d) the relevant classes of insurance, if applicable;
   (e) the address within the Host State from which documents may be obtained; and
   (f) the name of any person responsible for the management of the branch.
13.3.7 G (1) If the appropriate UK regulator proposes to refuse to give a consent notice, then paragraph 19(8) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to give the UK firm a warning notice.

(2) If the appropriate UK regulator decides to refuse to give a consent notice, then paragraph 19(12) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to give the UK firm a decision notice within three months of the date on which it received the UK firm’s notice of intention (two months in the case of a UK firm which is a UCITS management company or an AIFM and one month in the case of a UK firm which is an insurance intermediary). The UK firm may refer the matter to the Tribunal.

(3) [deleted]

13.3.7A G For details of the FCA’s procedures for the giving of warning notices or decision notices see DEPP 2 (Statutory notices and the allocation of decision making).

UCITS management companies: other information to be provided to the Host State

13.3.8 G A UK firm seeking to provide collective portfolio management services from a branch in another EEA State, is advised that it will need to refer to the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive which will require it to submit to that competent authority information relating to its depositary agreement and certain delegation arrangements.

MiFID branch forms

13.3.9 G (1) (a) A UK MiFID investment firm wishing to use a tied agent established in another EEA State is required to complete the form in Annex VII of MiFID ITS 4A and send it to the FCA.

[Note: article 14(1) of MiFID ITS 4A]

(b) A UK MiFID investment firm which intends to establish a branch in another EEA State is required to complete the form in Annex VI of MiFID ITS 4A and send it to the FCA.

[Note: article 13(1) of MiFID ITS 4A]

(c) A UK MiFID investment firm that intends to establish a branch which in turn intends to use tied agents is required to complete the forms in Annex VI and Annex VII of MiFID ITS 4A and send them to the FCA.

[Note: article 13(2) of MiFID ITS 4A]

(2) (a) Each of the forms in MiFID ITS 4A referred to in SUP 13.3.9G(1)(a) to (c) is replicated in SUP 13 Annex 1AR.

(b) These versions should be used for the purposes of notifications to the FCA.

(c) The forms should be submitted in accordance with SUP 13.5.3R.
13.4 Providing cross border services into another EEA State

Where is the service provided?

13.4.1 Guidance on where a cross border service is provided is given in SUP App 3.

The conditions for providing cross border services into another EEA State

13.4.2 A UK firm or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from AIFMD, MiFID or the UCITS Directive, paragraph 20(4B) of Part III of Schedule 3 to the Act. If a UK firm derives its EEA right from the MCD, it cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and paragraph 20(4BB) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

1. The UK firm has given the appropriate UK regulator, in the way specified by appropriate UK regulator's rules (see SUP 13.5.2 R), notice of its intention to provide cross border services (known as a notice of intention) which:
   a. identifies the activities which it seeks to carry on by way of provision of cross border services; and
   b. includes such other information as may be specified by the appropriate UK regulator (see SUP 13.5.2 R); and

2. [deleted]

3. If the UK firm is passporting under the IDD, the UK firm has received written notice from the appropriate UK regulator as described in SUP 13.4.5AG (paragraph 20 (3B)(b) of Schedule 3 to the Act); or

4. If the UK firm is passporting under AIFMD, the firm has received written notice from the FCA as described in SUP 13.4.4-AG (1)(c).
13.4.2A  
An appointed representative appointed by a firm to carry on insurance distribution activity on its behalf may provide cross border services in another EEA State under the IDD. In this case, the notice of intention in SUP 13.4.2 G (1) should be given to the appropriate UK regulator by the firm on behalf of the appointed representative.

13.4.2B  
An exempt professional firm which is included in the record of unauthorised persons carrying on insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order may provide cross border services in another EEA State under the IDD (see PROF 7.2).

13.4.2C  
A tied agent appointed by a MiFID investment firm to carry on investment services and activities (and ancillary services where relevant) does not have its own passporting right to provide cross border services in another EEA State. However, a MiFID investment firm remains free to appoint a tied agent to do business in another EEA State and where it does so, the tied agent will benefit from its passport.

13.4.2D  
(1) A MiFID investment firm that wishes to obtain a passport for the activity of operating a multilateral trading facility or operating an organised trading facility should follow the procedures described in this chapter.

(2) A UK market operator that operates a recognised investment exchange, a recognised auction platform (pursuant to the RAP regulations, the definition of regulated market in the Act is read for these purposes as including a recognised auction platform), an MTF or an OTF and wishes to provide cross border services into another EEA State should follow the procedure described in REC 4.2B.

13.4.2F  
A UK firm that is an AIFM may exercise an EEA right to market a UK AIF or EEA AIF managed by it under AIFMD when the following conditions are satisfied:

(1) the UK firm has given the FCA a notice of intention SUP 13.5.2 R; and

(2) the FCA has sent a copy of the notice of intention to the Host State regulator where the AIF will be marketed and has given the UK firm written notice that it has done so.

13.4.3  
[deleted]

13.4.3A  
[deleted]
Issuing a consent notice or notifying the Host State regulator

(2) [deleted]

(2A) If the UK firm’s EEA right derives from the IDD, paragraph 20(3B)(a) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to send a copy of the notice of intention to the Host State regulator within one month of receipt.

(2B) Where a consent notice is given under the UCITS Directive, the FCA will at the same time:

(a) communicate to the Host State regulator details of the compensation scheme intended to protect investors; and
(b) provide to the Host State regulator:
   (i) confirmation that the firm has been authorised as a management company under the provisions of the UCITS Directive;
   (ii) a description of the scope of the firm's authorisation; and
   (iii) details of any restriction on the types of EEA UCITS scheme that the firm is authorised to manage.

(3) If the UK firm's EEA right derives from the MCD, the FCA will give the Host State regulator a consent notice within one month of the date on which it received the UK firm's notice of intention.

(4) Where a consent notice is given under the MCD in relation to a tied MCD credit intermediary, the consent notice will include details of:
   (a) any MCD creditor or group to which the firm is tied; and
   (b) whether the MCD creditor or group take full and unconditional responsibility for the tied MCD credit intermediary's activities.

(1) If the UK firm's EEA right derives from AIFMD (other than the EEA right to market an AIF (referred to in (3)) and the condition in (2) is met, paragraph 20(3D) of Part III of Schedule 3 to the Act requires the FCA to:
   (a) send a copy of the notice of intention to the Host State regulator within one month of receipt;
   (b) include confirmation that the UK firm has been authorised by the FCA under AIFMD; and
   (c) immediately inform the UK firm that the notice of intention and confirmation have been sent to the Host State regulator.

(2) The condition referred to in (1) is that the FCA is satisfied that the firm complies and will continue to comply with:
   (a) the provisions implementing AIFMD, and
   (b) any directly applicable EU regulation made under AIFMD.

(3) If the UK firm's EEA right derives from AIFMD and relates to the EEA right to market an AIF and both the conditions in (4) are met, paragraph 20C of Part III of Schedule 3 to the Act requires the FCA to:
   (a) send a copy of the notice of intention to the Host State regulator within 20 working days of receipt;
   (b) include confirmation that the UK firm has been authorised by the FCA to manage AIFs with a particular investment strategy; and
   (c) where the notice of intention relates to an EEA AIF, inform the competent authority of the EEA AIF that the UK firm may start marketing the AIF in the EEA States covered by the notice of intention.

(4) The conditions referred to in (3) are that:
   (a) the FCA is satisfied that the UK firm complies, and will continue to comply with, AIFMD and any directly applicable EU regulation made under AIFMD; and
(b) where the AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by a full-scope UK AIFM or a full-scope EEA AIFM.

(5) If the FCA refuses to send a copy of the notice of intention to the Host State regulator it must notify the AIFM in writing and include the reasons for such refusal. In such case, the AIFM may refer the matter to the Tribunal.

13.4.4A  Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give a consent notice and where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.

13.4.5  Save where SUP 13.4.5AG applies, when the appropriate UK regulator sends a copy of a notice of intention, or if it gives a consent notice to the Host State regulator, it must inform the UK firm in writing that it has done so (paragraphs 20(3D)(a)(iii) and (4) and 20C(9) of Schedule 3 to the Act).

13.4.5A  If a UK firm’s EEA right derives from the IDD, when the Host State regulator has acknowledged receipt of the copy of the notice of intention, the appropriate UK regulator must:

(a) inform the UK firm in writing that the Host State regulator has received the notice of intention and that the firm may begin providing the services to which the notice of intention relates; and

(b) notify the firm of the applicable provisions (if any).

[Note: paragraph 20 (3B)(b) of Schedule 3 to the Act]

Applicable provisions for cross border services

13.4.6A  If a UK firm is passporting under the MCD, then the Host State regulator will notify the UK firm if there are any applicable provisions within two months of receiving a consent notice.

UCITS management companies: other information to be provided to the Host State

13.4.7  A UK firm seeking to provide collective portfolio management services in another EEA State under the freedom to provide cross border services, is advised that it will need to refer to the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive which will require it to submit to that competent authority information relating to its depositary agreement and certain delegation arrangements.

MiFID services forms

13.4.8  (1) A UK MiFID investment firm is required to submit an investment services and activities passport notification to the FCA by completing
the form in Annex I of MiFID ITS 4A. The firm should complete a separate form for each EEA State it wishes to provide services into.

[Note: article 4(1) of MiFID ITS 4A]

(2) A UK MiFID investment firm wishing to provide investment services or activities through a tied agent established in the UK is required to send an investment services and activities passport notification to the FCA by completing the parts of the form in Annex I of MiFID ITS 4A that are relevant to a tied agent. The firm should complete a separate form for each EEA State into which it wishes to provide services through a tied agent.

[Note: article 4(3) of MiFID ITS 4A]

(3) A UK MiFID investment firm operating a multilateral trading facility or operating an organised trading facility that intends to provide appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants in another EEA State, is required to send the details of the Host State in which it intends to provide such arrangements to the FCA by completing the form in Annex IV of MiFID ITS 4A. If the firm is notifying in respect of more than one MTF or OTF, it should complete a separate form for each MTF or OTF.

[Note: article 9 of MiFID ITS 4A]

(4) (a) Each of the forms in MiFID ITS 4A referred to in SUP 13.4G(1) to (3) is replicated in SUP 13 Annex 2R.

(b) These versions should be used for the purposes of notifications to the FCA.

(c) The forms should be submitted in accordance with SUP 13.5.3R.
13.5 Notices of intention

Specified contents: notice of intention to establish a branch

13.5.1 A UK firm, other than a CRD credit institution, wishing to establish a branch in a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice of intention in the form set out in:

(1) SUP 13 Annex 1R; or

(2) if the firm is a UK MiFID investment firm, SUP 13 Annex 1AR.

13.5.1AA A UK firm establishing a branch in a particular EEA state for the first time under the auction regulation must submit a notice of intention in the form set out in SUP 13 Annex 7R prior to its establishment of that branch or whenever possible thereafter.

Specified contents: notice of intention to provide cross border services

13.5.2 A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

(1) SUP 13 Annex 2 R if the UK firm is passporting under MiFID; or

(2) SUP 13 Annex 4 R if the UK firm is passporting under the CRD; or

(3) SUP 13 Annex 5 R if the UK firm is passporting under the IDD

(4) SUP 13 Annex 6 R, if the UK firm is a management company passporting under the UCITS Directive.

(5) SUP 13 Annex 8AR, if the UK firm is providing cross-border services under AIFMD to manage an AIF in another EEA State.

(6) SUP 13 Annex 8BR, if the UK firm is providing cross-border services under AIFMD to market an AIF in another EEA State.

(7) SUP 13 Annex 9 R, if the UK firm is passporting under the MCD
13.5.2-A R

(1) A UK firm wishing to provide a service into a particular EEA State for the first time under the auction regulation must inform the appropriate UK regulator of the information in (2) by email to emissionstrading@fca.org.uk prior to its provision of that service or whenever possible thereafter.

(2) The information required by (1) is:
   (a) name of the firm and the firm reference number;
   (b) EEA state in which the service is or will be provided; and
   (c) the proposed commencement date of the service or the date on which the service commenced.

13.5.2A G

SUP 13.5.2 R does not apply to UK firms exercising an EEA right under the auction regulation as they have automatic passport rights on the basis of their Home State authorisation under the auction regulation. However, the information required by SUP 13.5.2-A R assists the FCA’s supervision of a UK firm’s provision of a service in another EEA state under the auction regulation.

Method of submission of notices

13.5.3 R

(1) A UK firm, other than a credit union, must submit any notice under SUP 13.5.1R or SUP 13.5.2 R online at www.fca.org.uk using the online notification and application system.
   (a) [deleted]
   (b) [deleted]

(2) [deleted]
   (a) [deleted]
   (b) [deleted]
   (c) [deleted]
   (d) [deleted]
   (e) [deleted]
   (f) [deleted]

(3) Where a firm is obliged to submit a notice in accordance with (1), if the information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit that notice in the way set out in SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification).

(4) [deleted]
(1) If the information technology systems fail and online submission is unavailable for 24 hours or more, the appropriate UK regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 13.5.3 R (3) and SUP 15.7.4 R to SUP 15.7.9 G (Form and method of notification) should be used.

(2) Where SUP 13.5.3 R (3) applies to a firm, GEN 1.3.2 R (Emergency) does not apply.

Unregulated activities

A notice of intention (other than one to establish a branch or provide services in another EEA state under the auction regulation) may include activities within the scope of the relevant Single Market Directive which are not regulated activities [paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the Act], although in the case of a MiFID investment firm a notice of intention may only include ancillary services which are to be carried on with one or more investment services and activities [paragraphs 19(5B) and 20(2A) of Part III of Schedule 3 to the Act]. Regulation 19 of the EEA Passport Rights Regulations states that where a UK firm is able to carry on such an unregulated activity in the EEA State in question without contravening any law of the United Kingdom (or any part of the United Kingdom) the UK firm is treated, for the purposes of the exercise of its EEA right, as being authorised to carry on that activity.

Notifications to more than one EEA State

If a UK firm wishes to establish branches in, or provide cross border services into, more than one EEA State, a single notification may be provided but the relevant information for each EEA State should be clearly identifiable.
13.6 Changes to branches

13.6.1 (1) Where a UK firm is exercising an EEA right, other than under the CRD, and has established a branch in another EEA State, any changes to the details of the branch are governed by the EEA Passport Rights Regulations.

(2) References to regulations in this section are to the EEA Passport Rights Regulations.

(3) (a) A UK firm which is not an authorised person should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence.

(b) It is a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

(4) Where a UK MiFID investment firm exercises an EEA right under MiFID and has established a branch in another EEA State, any changes to the details of the branch are also governed by MiFID RTS 3A and MiFID ITS 4A.

13.6.2 UK firms should note that if a branch in another EEA State ceases to provide services, this may represent a change in requisite details or, if the firm is passporting under the Solvency II Directive, the relevant EEA details or relevant UK details.

13.6.3 UK firms should also note that changes to the details of branches may lead to changes to the applicable provisions to which the UK firm is subject. These changes should be communicated to the UK firm by the Host State regulator.

Firms passporting under CRD and the UCITS Directive.

13.6.4 If a UK firm has exercised an EEA right, under the CRD or the UCITS Directive, and established a branch in another EEA State, regulation 11(1) states that the UK firm must not make a change in the requisite details of the branch (see ■ SUP 13 Annex 1), unless it has satisfied the requirements of regulation 11(2), or, where the change arises from circumstances beyond the UK firm’s control, regulation 11(3) (see ■ SUP 13.6.10 G).

13.6.5 Where the change arises from circumstances within the control of the UK firm, the requirements in regulation 11(2) are that:
(1) the UK firm has given notice to the appropriate UK regulator and to the Host State regulator stating the details of the proposed change;

(2) the appropriate UK regulator has given the Host State regulator a notice informing it of the details of the change; and

(3) either the Host State regulator has informed the UK firm that it may make the change, or the period of one month beginning with the day on which the UK firm gave the Host State regulator the notice in (1) has elapsed.

Firms passporting under MiFID

13.6.5A G If a UK firm has exercised an EEA right to establish a branch under MiFID, it must not make a change in the requisite details of the branch (see SUP 13 Annex 1AR), use, for the first time, a tied agent established in the EEA State in which the branch is established, or cease to use a tied agent established in the EEA State in which the branch is established, unless it has satisfied the requirements of regulation 11A(2) (see SUP 13.6.5B G).

13.6.5B G The requirements of regulation 11A(2) are that:

(1) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and

(2) the period of one month beginning with the day on which the UK firm gave the notice has elapsed.

13.6.5C G A UK MiFID investment firm is also required to notify the FCA of changes to a branch or tied agent in accordance with:

(1) article 7 (Information to be notified concerning the change of branch or tied agent particulars) of MiFID RTS 3A;

(2) article 18 (submission of the change of branch particulars notification) of MiFID ITS 4A; and

(3) article 19 (submission of the change of the tied agent particulars notification) of MiFID ITS 4A.

13.6.5D G If any of the details in a branch passport notification change, a UK MiFID investment firm is required to notify the FCA by completing the form in Annex VI of MiFID ITS 4A.

[Note: article 18(1) of MiFID ITS 4A]

13.6.5E G If any of the details in a tied agent passport notification change, a UK MiFID investment firm is required to notify the FCA, by completing the form in Annex VII of MiFID ITS 4A.

[Note: article 19(1) of MiFID ITS 4A]
If a UK MiFID investment firm closes a branch or stops using a tied agent, it is required to notify the FCA using the form in Annex X of MiFID ITS 4A.

[Note: articles 18(4) and 19(4) of MiFID ITS 4A]

(1) Each of the forms in MiFID ITS 4A referred to in SUP 13.6.5DG to SUP 13.6.5FG is replicated in SUP 13 Annex 1AR.

(2) These versions should be used for the purposes of notifications to the FCA.

(3) The forms should be submitted in accordance with SUP 13.8.1R.

Firms passporting under the IDD

(1) If a UK firm has exercised an EEA right under the IDD and established a branch in another EEA State, the UK firm must not make any material change to the relevant details of the branch (see SUP 13 Annex 1R), unless it has satisfied the requirements in regulation 17(C)(2).

(2) The requirements in regulation 17(C)(2) are that:
   (a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and
   (b) the period of one month, beginning with the date on which the UK firm gave the notice, has elapsed.

Firms passporting under AIFMD

(1) If a UK firm has exercised an EEA right under AIFMD and established a branch in another EEA State, the UK firm must not make a material change in the requisite details of the branch or the identity of the AIFs it manages in the EEA State in which it has established a branch (see SUP 13 Annex 1), unless:
   (a) it has complied with regulation 17A(4) for a planned change; or
   (b) it has complied with regulation 17A(5) for an unplanned change.

(2) The requirements in regulation 17A(4) for a planned change are that:
   (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
   (b) either the FCA:
      (i) has consented to the change; or
      (ii) has not objected to the change in the period of one month beginning on the day on which the UK firm gave notice.

(3) The requirements in regulation 17A(5) for an unplanned change are that:
   (a) the UK firm has given notice to the FCA immediately after an unplanned change has occurred; and
   (b) the FCA has consented to the change.
Firms passporting under the MCD

13.6.9D  (1) A UK firm which has exercised an EEA right deriving from the MCD to establish a branch, must not make any material changes to the requisite details of the branch unless it has complied with the requirements in regulation 17(B)(2).

(2) The requirements in regulation 17(B)(2) are that
   (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
   (b) the period of one month beginning with the day on which the UK firm gave notice has elapsed.

(3) Paragraph (1) does not apply to changes occasioned by circumstances beyond the control of the UK firm.

Changes arising from circumstances beyond the control of a UK firm

13.6.10  (1) If the change arises from circumstances beyond the UK firm’s control, the UK firm is required by regulation 11(3) or regulation 13(3) to give a notice to the appropriate UK regulator and to the Host State regulator stating the details of the change as soon as reasonably practicable;

(2) The appropriate UK regulator believes that for a change to arise from circumstances beyond the control of a UK firm, the circumstances should be outside the control of the firm as a whole and not just the branch in the EEA State.

(3) This guidance is not applicable to MiFID investment firms, firms passporting under the MCD or IDD or AIFMs.

The process

13.6.11  When the appropriate UK regulator receives a notice from a UK firm other than a MiFID investment firm (see SUP 13.6.5 G (1) and SUP 13.6.7 G (1)), a UK firm exercising an EEA right under the MCD (see SUP 13.6.9D G), a UK firm exercising an EEA right under the IDD (see SUP 13.6.9AG) or an AIFM (see SUP 13.6.9C G) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one month from the day on which it received the notice.

13.6.12  If the appropriate UK regulator consents to the change, then under regulations 11(5) and 13(5) it will:

   (1) give a notice to the Host State regulator informing it of the details of the change; and
   (2) inform the UK firm that it has given the notice, stating the date on which it did so.

13.6.12A Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give consent to a change (or proposed change)
and where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give consent in relation to a UK firm whose immediate group includes a PRA-authorised person.

13.6.15 If the appropriate UK regulator refuses to consent to a change, then under regulations 11(6) and 13(6):

(1) the appropriate UK regulator will give notice of the refusal to the UK firm, stating its reasons and giving an indication of the UK firm’s right to refer the matter to the Tribunal and the procedures on such a reference; and

(2) the UK firm may refer the matter to the Tribunal.

13.6.16 Standard forms are available from the FCA and PRA authorisations teams (see SUP 13.12 (Sources of further information)) to give the notices to the appropriate UK regulator described in SUP 13.6.5 G (1), SUP 13.6.5B G, SUP 13.6.7 G (1), SUP 13.6.8 G and SUP 13.6.10 G (1).

The process: MiFID investment firms

13.6.17 (1) When the FCA receives a notice from a UK MiFID investment firm (see SUP 13.6.5BG (1)), it is required by regulation 11A(3) to inform the relevant Host State regulator of the proposed change as soon as reasonably practicable.

(2) The FCA is required to use the forms in Annex XI, Annex XII or Annex XIII of MiFID ITS 4A, as applicable.

(3) The firm in question may make the change once the period of one month beginning with the day on which it gave notice has elapsed.

The process: AIFMs

13.6.18 (1) When the FCA receives a notice from an AIFM (see SUP 13.6.9C G) for a planned change and such change means the AIFM no longer complies with AIFMD, the FCA must inform the AIFM without undue delay that:

(a) the FCA objects to the change, including reasons for its decision; and

(b) the AIFM must not implement the change.

In these circumstances the AIFM may refer the matter to the Tribunal.

(2) If a planned change is implemented or an unplanned change takes place and results in the AIFM no longer complying with an implementing provision of AIFMD, the FCA must:

(a) take steps to ensure that the AIFM complies with that provision or ceases to exercise the EEA right; and

(b) give notice to the AIFM with reasons for taking such steps.

In these circumstances, the AIFM may refer the matter to the Tribunal.
(3) If a planned change is implemented or an unplanned change takes place and results in no change to the AIFM's compliance with an implementing provision, the FCA must:

(a) give a notice to the Host State regulator informing it of the change; and

(b) inform the firm that it has given the notice, stating the date on which it did so.

The process: MCD

When the FCA receives a notice from a UK firm exercising an EEA right under the MCD it will, under regulation 17(B)(3), inform the relevant Host State regulator of the proposed change as soon as reasonably practicable. The UK firm in question may make the change once a period of one month has elapsed beginning with the day on which it gave notice.

The process: the IDD

(1) When the appropriate UK regulator receives a notice from a UK firm exercising an EEA right under the IDD it will, under regulation 17(C)(3), inform the Host State regulator of the proposed change as soon as reasonably practicable, and in any event, within one month of receiving the notice from the UK firm.

(2) The UK firm may make the change once a period of one month has elapsed beginning with the day on which it gave notice.
13.7 Changes to cross border services

13.7.1 Where a UK firm is exercising an EEA right under the UCITS Directive, MiFID, the Insurance Directives, AIFMD or the IDD and is providing cross border services into another EEA State, any changes to the details of the services are governed by the EEA Passport Rights Regulations.

(2) References to regulations in this section are to the EEA Passport Rights Regulations.

(3) (a) A UK firm which is not an authorised person should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence.

(b) It is a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

(4) Where a UK MiFID investment firm exercises an EEA right under MiFID to provide cross border services, any changes to the details of the services are also governed by MiFID RTS 3A and MiFID ITS 4A.

13.7.2 UK firms should also note that changes to the details of cross border services may lead to changes to the applicable provisions to which the UK firm is subject.

Firms passporting under the UCITS Directive

13.7.3 If a UK firm is passporting under the UCITS Directive, regulation 12(1) states that the UK firm must not make a change in its programme of operations, or the activities to be carried on under its EEA right, unless the relevant requirements in regulation 12(2) have been complied with. These requirements are:

(1) the UK firm has given a notice to the FCA and to the Host State regulator stating the details of the proposed change; or

(2) if the change arises as a result of circumstances beyond the UK firm’s control, the UK firm has as soon as practicable (whether before or after the change) given a notice to the FCA and to the Host State regulator, stating the details of the change.
Standard forms are available from the FCA authorisations team (see ■SUP 13.12 (Sources of further information)) to give the notices to the FCA referred to in ■SUP 13.7.3 G (1) and ■SUP 13.7.3A G.

Firms passporting under MiFID

If a UK firm is providing cross border services in a particular EEA State in exercise of an EEA right deriving from MiFID, the UK firm must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:

1. changing the activities to be carried on in exercise of that EEA right;
2. using, for the first time, any tied agent to provide services in the territory of that EEA State; or
3. ceasing to use any tied agent to provide services in the territory of that EEA State.

The requirements of regulation 12A(2) are that:

1. the UK firm has given notice to the appropriate UK regulator stating the details of the proposed change; and
2. the period of one month beginning with the day on which the UK firm gave the notice mentioned in (1) has elapsed.

A UK MiFID investment firm is also required to notify the FCA of any changes to the information in its investment services and activities passport notification, including changes relating to a UK tied agent, in accordance with:

1. article 4 (Information to be notified concerning the change of investment services and activities particulars) of MiFID RTS 3A; and
2. article 7 (Submission of the change of investment services and activities particulars notification) of MiFID ITS 4A.

If any of the details in an investment services and activities passport notification change, a UK MiFID investment firm is required to notify the FCA by completing the form in Annex I of MiFID ITS 4A. [Note: article 7(1) of MiFID ITS 4A]

When communicating a change to investment services and/or activities, ancillary services or financial instruments, the firm is required to list all:

1. the investment services and/or activities and ancillary services that it currently provides or intends to provide in the future; and
2. the financial instruments that are relevant to those activities and services.

If any of the details in the notification for the provision of arrangements to facilitate access to an MTF or an OTF change, the investment firm operating the MTF or the OTF is required to notify the FCA by completing the form in Annex IV of MiFID ITS 4A. [Note: article 11(1) of MiFID ITS 4A]
(1) Each of the forms in MiFID ITS 4A referred to in §SUP 13.7.3DG and §SUP 13.7.3EG is replicated in §SUP 13 Annex 2R.

(2) These versions should be used for the purposes of notifications to the FCA.

(3) The forms should be submitted in accordance with §SUP 13.8.1R.

Termination of an investment services and activities passport

A UK MiFID investment firm should use the relevant form in §SUP 13 Annex 2AR to notify the FCA that it intends to:

(1) change its programme of operations by ceasing to provide cross border services; or

(2) change its programme of operations by ceasing to provide cross border services through a tied agent established in the UK; or

(3) terminate in the territory of an EEA State, the provision of arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State.

Standard electronic forms

For further details on giving the notices to the appropriate UK regulator, as described in §SUP 13.7.3G (1), §SUP 13.7.3AG and §SUP 13.7.3BG, UK firms may wish to use the standard electronic form available from the FCA and PRA authorisation teams (see §SUP 13.12 (Sources of further information)).

Firms passporting under the CRD

A UK firm providing cross border services under the CRD is not required to supply a change to the details of cross border services notice.

Firms passporting under the IDD

(1) A UK firm which has exercised an EEA right under the IDD to provide a cross border service must not make any material change to the relevant details unless it has satisfied the requirements in regulation 17(C)(2).

(2) The requirements in regulation 17(C)(2) are that:

(a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and

(b) the period of one month, beginning with the date on which the UK firm gave the notice, has elapsed.
Liaison between regulators

Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give consent to a change (or proposed change) and where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give consent in relation to a UK firm whose immediate group includes a PRA-authorised person.

Firms passporting under AIFMD

If a UK firm has exercised an EEA right under AIFMD to provide cross-border services to manage an AIF, regulation 17A(2) states that the UK firm must not make a material change to:

(1) the programme of operations, or the EEA activities, to be carried out in exercise of that right; or

(2) the EEA States in which it manages AIFs; or

(3) the identity of the AIFs it manages in those EEA States;

unless the UK firm complies with the relevant requirements in regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see SUP 13.6.9CG (2) and SUP 13.6.9CG (3)).

If a UK firm has exercised an EEA right deriving from AIFMD to provide cross-border services to market an AIF, regulation 17A(3) states that it must not make a material change to any of the following:

(1) the programme of operations identifying the AIF the AIFM intends to market and information on where the AIF is established;

(2) the AIF rules or instruments of incorporation;

(3) the depositary of the AIF;

(4) the description of, or information on, the AIF available to investors;

(5) if the AIF is a feeder AIF, the jurisdiction where the master AIF is established;

(6) any additional information referred to in FUND 3.2.2 R (Prior disclosure of information to investors), for each AIF the AIFM intends to market;

(7) the EEA States in which the AIFM intends to market the units or shares of the AIF to an investor that is a professional client; and

(8) information about arrangements made for the marketing of the AIF and, where relevant, arrangements to prevent the AIF from being marketed to an investor that is a retail client, including where the AIFM relies on the activities of independent entities to provide investment services for the AIF;

unless the UK firm complies with regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see SUP 13.6.9CG (2) and SUP 13.6.9CG (3)).
Firms passporting under the MCD

(1) A UK firm which has exercised an EEA right deriving from the MCD to provide a cross border service, must not make any material changes to the service unless it has complied with the requirements in regulation 17(B)(2).

(2) The requirements in regulation 17(B)(2) are that;
   (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
   (b) the period of one month has elapsed, beginning with the day on which the UK firm gave notice.

(3) Paragraph (1) does not apply to a changes occasioned by circumstances beyond the control of the UK firm.
13.8 Changes of details: provision of notices to the appropriate UK regulator

13.8.1 A firm must complete and submit the following notices in accordance with the procedures in § SUP 13.5 for notifying the establishment of a branch or the provision of cross border services:

(a) a notice of a change to a branch or a tied agent referred to in § SUP 13.6.5G(1), § SUP 13.6.5BG(1), § SUP 13.6.5DG, § SUP 13.6.5EG, § SUP 13.6.5FG, § SUP 13.6.7G(1), § SUP 13.6.8G, § SUP 13.6.9AG, § SUP 13.6.9BR, § SUP 13.6.9CG, § 13.6.9DG and § SUP 13.6.10G(1); or

(b) a notice of change to cross border services referred to in § SUP 13.7.3G(1), § SUP 13.7.3AG(1), § SUP 13.7.3DG, § SUP 13.7.3EG, § SUP 13.7.3GR, § SUP 13.7.5G(1), § SUP 13.7.6G, § SUP 13.7.11AG, § SUP 13.7.13BG, § SUP 13.7.14G and § SUP 13.7.15G.

(2) [deleted]

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

(e) [deleted]

(f) [deleted]

(3) [deleted]

(4) [deleted]

13.8.1A The effect of § SUP 13.8.1 R (1) is that a firm should submit any form, notice or application under § SUP 13.8.1 R (1) in the following ways:

(1) A UK firm, other than a credit union, should submit it online at www.fca.org.uk using the online notification and application system.

(2) If the information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm should submit it in the way set out in § SUP 13.5.3 R (3) and § SUP 15.7.4 R to § SUP 15.7.9 G (Form and method of notification). § GEN 1.3.2 R (Emergency) does not apply in these circumstances.
(3) If the information technology systems fail and online submission is unavailable for 24 hours or more, the appropriate UK regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission should be used.

(4) [deleted]

13.8.1B  G

13.8.2  G  UK firms passporting under the CRD may be required to submit the change to details notice in the language of the Host State as well as in English.
13.10 Applicable provisions

13.10.1 UK firms are reminded that conduct of business rules, and other rules made for the general good, may apply to business carried on in the Host State by a UK firm. These are known in the Act as the applicable provisions (paragraph 19(13) of Part III of Schedule 3 to the Act).

13.10.3 These Host State provisions often have requirements about the soliciting of business, for example, advertising and cold-calling rules. A UK firm should ensure it is familiar with, and acts in compliance with, the relevant requirements of its Host State regulator.
13.11 Record keeping

13.11.1 (1) A UK firm which is exercising an EEA right must make and retain a record of:

(a) the services or activities it carries on from a branch in, or provides cross-border into, another EEA State under that EEA right; and

(b) the details relating to those services or activities (as set out in SUP 13.6 and SUP 13.7).

(2) The record in (1) must be kept for five years (for firms passporting under MiFID) or three years (for other firms) from the earlier of the date on which:

(a) it was superseded by a more up-to-date record; or

(b) the UK firm ceased to have a branch in, or carry on cross border services into, any EEA State under an EEA right.

13.11.2 The record in SUP 13.11.1 R need not relate to the level of business carried on. A UK firm may comply with SUP 13.11.1 R by, for example, keeping copies of all notices of intention and change to details notices.

13.11.3 A UK firm should monitor the business carried on under an EEA right to ensure that any changes to details are notified as required by SUP 13.6 (Changes to branches) and SUP 13.7 (Changes to cross border services).
13.11A Enhanced supervision of UK firms exercising rights under the IDD

13.11A.1  
(1) Under article 7(2) of the IDD, ensuring compliance with the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance-based investment products) of the IDD by a UK firm exercising an EEA right under the IDD to establish a branch is the responsibility of the Host State. Ensuring compliance with all other obligations is the responsibility of the UK. Ensuring compliance with the obligations in the IDD by UK firms providing cross border services is the responsibility of the UK.

(2) However, article 7(1) of the IDD provides that responsibility for compliance can be altered in a particular situation. That is where an IDD insurance intermediary's primary place of business is located in a Host State. In that case, the Home State and Host State regulators may agree that the Host State regulator will act as the Home State regulator in relation to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance-based investment products) and VII (Sanctions and other measures) of the IDD.

13.11A.2  
If a UK firm is exercising an EEA right derived from the IDD in a Host State which is its primary place of business, the FCA can enter into a special agreement with the Host State regulator. The agreement can subject the UK firm to enhanced supervision by the Host State regulator. Section 203B of the Act enables the FCA’s ability to enter into this sort of agreement (an “Article 7(1) Agreement”).
13.12 Sources of further information

13.12.1 (1) Given the complexity of issues raised by passporting, UK firms are advised to consult legislation and also to obtain legal advice at earliest opportunity. Firms are encouraged to contact their usual supervisory contact at the appropriate UK regulator to discuss their proposals. However, a UK firm which is seeking guidance on procedural or notification issues relating to passporting should contact the FCA and PRA authorisations teams, as and where appropriate.

(2) An applicant for Part 4A permission which is submitting a notice of intention with its application for such permission should contact the FCA and PRA authorisations teams, as and where appropriate.

13.12.2 To contact the FCA and/or PRA authorisations teams, please see the details provided on that regulator's website.
Passporting: Notification of intention to establish a branch in another EEA state

This annex consists of only one or more forms. Forms can be completed online now by visiting [http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx](http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx) for a PRA-authorised person or [www.fca.org.uk/firms/passporting](http://www.fca.org.uk/firms/passporting) for an FCA-authorised person.

The forms are also to be found through the following address:

Passporting: Notification of intention to establish a branch in another EEA state

[Note: For CRR Firms, from 16th September 2014, forms found in Annex I of the Commission Implementing Regulation (EU) No 926/2014 replace the PDF form linked to in SUP 13 Annex 1R. CRR firms should no longer use this form from this date. Further information can be found on the PRA's website via the link above. SUP 13 Annex 1R will be updated in due course.]
SUP 13: Exercise of passport rights by UK firms

Annex 1
Passporting: Branch passport notifications and tied agent notifications under MiFID ITS 4A

This annex consists of only one or more forms. Forms can be completed online now by visiting: [https://www.fca.org.uk/firms/connect](https://www.fca.org.uk/firms/connect) for an FCA-authorised person.

The forms can also be found through the following address:

Passporting: Branch passport notifications and tied agent notifications under MiFID II ITS 4A of MiFID – SUP 13 Annex 1AR

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)
Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A)

This annex consists of only one or more forms. Forms can be completed online now by visiting: https://www.fca.org.uk/firms/passporting.

The forms can also be found through the following address:
http://www.fca.org.uk/firms/passporting

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)
Passporting: Notification to cease the provision of cross border services under MiFID

This annex consists of only one or more forms. Forms can be completed online now by visiting: [http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms](http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms) for an FCA-authorised person.

The forms can also be found through the following address:

Passporting: Notification to stop the provision of services under MiFID and notification to terminate the provision, within the territory of an EEA State, arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State – SUP 13 Annex 2AR

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)
Passporting: Consolidated Life Directive and Third Non-Life Directive
SUP 13 : Exercise of passport rights by UK firms

Annex 3
Passporting: Capital Requirements Directive
Passporting: Insurance Distribution Directive

This annex consists of only the Passporting Notification of intention to provide cross border services in another EEA State Insurance Distribution Directive (SUP 13 Annex 5R - Notification under SUP 13.5.2R) form.
Passporting: UCITS Directive

This annex consists of only one or more forms. Forms can be completed online now by [http://www.fsa.gov.uk/Pages/doing/index.shtml](http://www.fsa.gov.uk/Pages/doing/index.shtml)

The forms are also to be found through the following address:

Passporting: UCITS Directive - [SUP 13 Annex 6](#)
Passporting: Emissions Trading. Notice of intention from a UK firm to exercise the right of establishment in another EEA Member State

This annex consists of only one or more forms. Forms can be completed online now by visiting www.fca.org.uk/firms/connect.

The forms are also to be found through the following address:

Passporting: Emissions Trading. Notice of intention from a UK firm to exercise the right of establishment in another EEA Member State - SUP 13 Annex 7
Passporting: AIFMD

This annex consists of one or more forms. Forms can be completed online now by visiting [FCA web address to follow]

The forms are also to be found through the following address:

Passporting: AIFMD - cross border services (management) - SUP 13 Annex 8AR
Passporting: AIFMD - cross border services (marketing) - SUP 13 Annex 8BR
Passporting: MCD

This annex consists of one or more forms. Forms can be completed online now by [address to follow].