

Chapter 13

Exercise of passport rights by UK firms

13.1 Application and purpose

Application

- 13.1.1 **G** 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 **G** 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 **G** 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** **G** 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/pr/Pages/authorisations/passporting/notifying.aspx> as the *PRA* is the *appropriate UK regulator* for *Solvency II firms*.
- 13.2.2** **G** 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** **G** 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** **G** 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** **G** 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** **G** 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

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- (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

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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*.

13.3.2A G [deleted]

13.3.2B G 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*.

13.3.2C G 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).

13.3.2D G 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.

13.3.4 **G** [deleted]

13.3.4-A **G** 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.

13.3.4A **G** [deleted]

Issue of a consent notice to the Host State regulator

13.3.5 **G** (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*.

13.3.5A **G** Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give a consent notice, except where paragraph

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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*.

- (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 **G** 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 **G** 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).

(5) if the *UK firm* is passporting under the *MCD*, one *month* has elapsed, beginning with the date on which the *firm* receives the notice, as described in ■ SUP 13.4.5 G.

13.4.2A **G** 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 **G** 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 **G** 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 **G**

- (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 **G** 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.

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13.4.3A **G** [deleted]

Issuing a consent notice or notifying the Host State regulator...

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(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

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- (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 G 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-authorized person*.

13.4.5 G 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 G 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 G 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 G 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 G (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 *tiered 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 *tiered agent*. The *firm* should complete a separate form for each *EEA State* into which it wishes to provide services through a *tiered 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 13.4.8G(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 **R** 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 **R** 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 **R** 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]

13.5.3-A **R**

13.5.3A **G**

- 13.5.4 **G** (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.

13.5.4A **G** [deleted]

Unregulated activities

13.5.5 **G** 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

13.5.7 **G** 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** **G** (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 **G** 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 **G** 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 **G** 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 **G** 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*]

13.6.5F G 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*]

13.6.5G G

- (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

13.6.9A G

- (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

13.6.9C G

- (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 G
- (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 G
- (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 G 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 G 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 G 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-authorized person*.

13.6.15 **G** 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 **G** 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 **G**

- (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 **G**

- (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

13.6.19

G

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

13.6.20

G

- (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 **G**
- (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 **G** *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 **G** 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

13.7.3A

G

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*.

13.7.3B

G

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.

13.7.3C

G

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*.

13.7.3D

G

- (1) 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*]

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

- (a) the *investment services and/or activities* and *ancillary services* that it currently provides or intends to provide in the future; and
- (b) the *financial instruments* that are relevant to those activities and services.

13.7.3E

G

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*]

- 13.7.3F** G
- (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

- 13.7.3G** G
- 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

- 13.7.6A** G
- For further details on giving the notices to the *appropriate UK regulator*, as described in ■ SUP 13.7.3 G (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)).

- 13.7.7A** G [deleted]

Firms passporting under the CRD

- 13.7.11** G
- 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

- 13.7.11A** G
- (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

13.7.13A **G** 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

13.7.13B **G** 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)).

13.7.14 **G** 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 *depository* 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

13.7.15

G

- (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 R

- (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 G

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** **G** *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** **G** 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 **R** (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 **G** 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 **G** 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 G

- (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 G

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 **G** (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 **G** 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/prs/Pages/authorisations/passporting/notifying.aspx> for a *PRA-authorised person* or 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 -SUP 13 Annex 1

[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.]

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> 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: <http://www.fsa.gov.uk/Pages/doing/index.shtml> .

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)

SUP 13 Annex 2

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> for an *FCA-authorized 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

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>

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]
:Passporting: MCD - SUP 13 Annex 9R

