Chapter 13

Exercise of passport rights by UK firms
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 2R if the UK firm is passporting under MiFID; or

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

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

(4) SUP 13 Annex 6R, 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 9R, if the UK firm is passporting under the MCD

13.5.2-A (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
appopriate 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.

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

(1) A UK firm, other than a credit union, must submit any notice under SUP 13.5.1 R 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]
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 [deleted]

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.